

# Sentencing Outcomes in 28 Felony Courts 1985

105743

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## Executive summary

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This report on felony court sentencing outcomes expands on a similar effort 2 years ago. The first attempt to examine felony sentencing was limited to 18 jurisdictions while this current effort reflects sentencing outcomes in 28 jurisdictions.

The counties covered in this report are large, with an average population of 1.1 million persons. While the counties involved in this report reflect what is occurring in urban and densely populated suburban areas, they nonetheless represent a variety of experience as to how sentencing is approached. For example, some of these counties operate under a determinate sentencing scheme (no parole board reviews the judge's sentence) while others operate under an indeterminate sentencing scheme.

The purpose of this report is to describe sentencing outcomes in felony court for selected serious offenses (homicide, rape, robbery, aggravated assault, burglary, larceny, and drug trafficking). Among the principal findings were:

- Nearly 3 out of every 10 (29%) sentences for these selected felonies involved jail.
- While the use of jail varies among individual jurisdictions, there is a tendency for determinate sentencing jurisdictions to rely much more heavily upon jail in felony sentencing than is the case with indeterminate jurisdictions (45% versus 17%).
- The use of jail in felony sentencing also varied substantially among the participating jurisdictions from less than 1% of the sentences in Dallas and Harris Counties (Tex.) to 57% of the sentences in King County (Wash.).
- The average (mean) prison term imposed in determinate sentencing jurisdictions was 40 to 50% lower than those found for indeterminate sentencing jurisdictions.
- There was a much more narrow range in sentences imposed for each of the selected crime categories in the determinate sentencing jurisdictions than in the indeterminate sentencing jurisdictions.
- Because of parole board discretion in releasing prisoners, the average amount of time served in prison is a more relevant measure for indeterminate sentencing jurisdictions than for determinate sentencing jurisdictions.
- Subclassifications of general crime categories revealed substantial differences in imprisonment rates and average prison terms. For example, 56% of those persons convicted of residential burglary were sentenced to prison for an average term of 67 months while only 47% of those persons convicted of a non-residential burglary were sentenced to prison for an average term of 46 months.
- The number of charges on which a person was convicted affects sentencing outcomes such that only 39% of those convicted on a single charge receive a prison sentence for an average term of 73 months in contrast to 80% of those convicted on 4 or more charges whose average prison term is 150 months.
- Seven out of every 10 defendants (71%) convicted of a serious felony are 30 years of age or younger.

## Acknowledgments

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This report is the product of continuing collaboration with representatives of the Bureau of Justice Statistics (BJS) and the Executive Committee and staff of the National Association of Criminal Justice Planners (NACJP) in the effort to develop a workable methodology for collecting data on sentencing outcomes in felony court. These efforts have resulted in identifying where sentencing data are likely to exist and in refining the data collection methodology, especially by clarifying terms used to make them as generic as possible.

This report is dedicated in memory of Jerome D. Timmons, who died in September 1986. Jerry was Executive Director of the Los Angeles Countywide Criminal Justice Coordination Committee. He was involved with the initial methodological development of the sentencing statistical series and was instrumental in obtaining the participation of Los Angeles County in this series.

The project owes a debt of gratitude to the planners and agency personnel who represent the following jurisdictions and who coordinated the data collection effort:

Baltimore City, Md.  
Baltimore County, Md.  
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Erie County, N.Y.  
Essex County, N.J.  
Franklin County, Ohio  
Harris County, Tex.  
Hennepin County, Minn.  
Jefferson County, Ky.  
Jefferson Parish, La.  
Kane County, Ill.  
King County, Wash.  
Los Angeles County, Calif.  
Lucas County, Ohio  
Manhattan, N.Y.  
Maricopa County, Ariz.  
Mecklenburg County, N.C.  
Milwaukee County, Wisc.  
Multnomah County, Ore.  
Oklahoma County, Okla.  
Orleans Parish, La.  
Philadelphia, Pa.  
San Diego County, Calif.  
St. Louis City, Mo.  
Suffolk County, N.Y.

This study also benefited from the cooperation of the New Jersey Administrative Office of the Courts, which provided data for Essex County.

In addition, the project owes special thanks to the staff at BJS, in particular to Carla Gaskins, our program monitor, and to Dr. Steven Schlesinger, Director of the Bureau of Justice Statistics (BJS).



## Chapter 1 Overview of the study

### Purpose of the study

This report is part of an effort by the Bureau of Justice Statistics to establish a statistical series on sentencing outcomes in felony courts throughout the United States. Sentencing represents one of the critical points in the administration of criminal justice, yet it is a process bereft of statistical data at the national level.

This lack of data is attributable largely to differences among States in laws governing sentencing practices and to idiosyncratic record systems within jurisdictions that complicate the collection of data from neighboring jurisdictions as well as from jurisdictions across the United States.

While the task is difficult, it is not impossible. Indeed, this study is the second effort by the National Association of Criminal Justice Planners to examine sentencing outcomes in felony court.<sup>1</sup> The first effort, undertaken 2 years ago, examined sentencing outcomes for selected felony offenses in 18 large urban and suburban jurisdictions. This current effort has expanded participation to 28 jurisdictions.

These two initial efforts to collect sentencing data have been restricted to jurisdictions with large populations in order to generate a sufficient number of cases for analysis and, at the same time, to permit project staff to focus on a manageable number of participants. This approach has enabled project staff to develop an understanding of the record systems supplying sentencing information and the operations of the criminal justice process within each jurisdiction as well as to conduct followup inquiries on the data received whenever the need arose.

<sup>1</sup>The first report was *The Scales of Justice: Sentencing Outcomes in 18 Felony Courts*, by Mark A. Cunniff (Washington, DC: National Association of Criminal Justice Planners, 1984) summarized in "Felony Sentencing in 18 Local Jurisdictions," by Mark A. Cunniff (Washington, DC: Bureau of Justice Statistics Special Report, NCJ-97681, May, 1985).

This study is not designed to be representative of sentencing outcomes across the United States. That goal will be attained at some later point in time. Rather, the purpose of this study is twofold. The first is to develop, refine, and implement a methodology that strives for comparability among jurisdictions with regard to sentencing outcomes despite differences in sentencing schemes and record systems. The second purpose is to develop methods of presenting and analyzing data so as to provide information that is useful in understanding the sentencing process without discounting differences among jurisdictions.

### Scope of the study

This report focuses upon sentences meted out in courts of general jurisdiction for seven selected felony offenses: homicide, rape, robbery, aggravated assault, burglary, larceny, and drug trafficking. By limiting the scope of the study to these seven offenses, the project was able to formulate common definitions that facilitate comparability among contributing jurisdictions.

The project reviewed the State penal codes of each participating jurisdiction to define the seven selected offenses in the context of those codes. This review was also useful in understanding sentencing outcomes, since judges must sentence according to the laws that govern their jurisdiction. A separate report, "State Penal Code Citations," details the penal code citations that constitute each crime category for each jurisdiction.<sup>2</sup> Although there is some variation in the definition of crime categories across jurisdictions, this variation is not substantial. A general description of the elements constituting the seven offense categories appears in appendix A of this report.

To obtain the necessary data, the project contacted 44 jurisdictions, of which 28 accepted the invitation to

<sup>2</sup>The report, "State Penal Code Citations," is not a published document. Inquiries concerning its content should be directed to the National Association of Criminal Justice Planners.

participate. Each participating jurisdiction embraces a single county, that is, a court of original jurisdiction serving a particular county. These courts may be funded by either the State or the county, depending on State law, but in all instances they exercise original jurisdiction in felony matters.<sup>3</sup>

As noted earlier, the jurisdictions participating in this study are large in population size, with an average population of 1.1 million (table 1.1). The jurisdictions range in population from 294,000 for Kane County, Ill., to 7,900,000 for Los Angeles County.<sup>4</sup> Ten jurisdictions have populations of over one million, 12 have populations between 500,000 and one million, and 6 have populations below 500,000.

### Data source

The project relied on a variety of record sources in its search for data on sentencing outcomes. Although court records were used in the majority of jurisdictions (16 out of 28), prosecutorial or criminal justice information systems (CJIS) data were also utilized either on their own or in conjunction with court records in many jurisdictions. The reliance on a variety of record sources reflects the differential capability among justice agencies within a jurisdiction to identify cases that fell within the scope of the study and to retrieve information on those cases.

For example, the study focused on defendants sentenced in calendar year 1985. Most court records, however, are kept by the date on which the case was initiated. While most

<sup>3</sup>Not all felony arrests, of course, are disposed of as felonies. Those felony arrests that are reduced to misdemeanors at stages in the criminal justice process prior to being bound over to felony court are handled in a lower court. In addition, even those felony arrests that are bound over to felony court do not always result in a felony conviction. This study examined sentencing on seven selected felony offenses that were adjudicated as felonies.

<sup>4</sup>This report contains sentencing information for all of Los Angeles County. In the first report, referenced earlier, data were collected only for the Central Court District of Los Angeles County, which closely coincides with the geographic boundaries of the City of Los Angeles.

**Table 1.1. Participating jurisdictions, 1985**

County or jurisdiction	City and State	Population	Agency record source	Type of records	Unweighted number of sentences
Baltimore City*	Baltimore, Md.	763,600	Court	Machine with some manual	738
Baltimore County*	Towson, Md.	673,100	Court & Prosecutor	Machine with some manual	585
Dade County*	Miami, Fla.	1,706,000	Court	Machine	1048
Dallas County	Dallas, Tex.	1,723,400	Court	Machine	733
Davidson County*	Nashville, Tenn.	485,400	Court	Machine with some manual	788
Denver*	Denver, Colo.	504,600	Court	Machine with some manual	746
Erie County	Buffalo, N.Y.	985,300	Prosecutor	Machine	432
Essex County	Newark, N.J.	831,800	Court	Machine	978
Franklin County	Columbus, Ohio	893,800	Court	Machine with some manual	870
Harris County	Houston, Tex.	2,747,300	Court	Machine with some manual	1394
Hennepin County*	Minneapolis, Minn.	969,800	Court	Machine with some manual	761
Jefferson County*	Louisville, Ky.	682,700	Prosecutor	Machine with some manual	684
Jefferson Parish*	Gretna, La.	474,800	Prosecutor	Manual	579
Kane County*	Geneva, Ill.	294,300	Court	Machine	372
King County	Seattle, Wash.	1,324,000	Prosecutor	Machine	725
Los Angeles County*	Los Angeles, Calif.	7,901,200	Prosecutor	Machine	3124
Lucas County*	Toledo, Ohio	464,000	Court	Manual	539
Manhattan	New York, N.Y.	1,456,100	Prosecutor	Machine with some manual	913
Maricopa County*	Phoenix, Ariz.	1,714,800	Court	Machine	1193
Mecklenburg County	Charlotte, N.C.	432,900	Court & Prosecutor	Manual with some machine	269
Milwaukee County*	Milwaukee, Wis.	954,100	Prosecutor	Machine	711
Multnomah County	Portland, Ore.	561,800	Court	Machine	918
Oklahoma County*	Oklahoma City, Okla.	622,400	Prosecutor	Machine with some manual	664
Orleans Parish*	New Orleans, La.	559,100	Prosecutor	Machine with some manual	712
Philadelphia*	Philadelphia, Pa.	1,546,700	Court	Manual with some machine	854
San Diego County	San Diego, Calif.	2,063,900	CJIS**	Machine	562
St. Louis City	St. Louis, Mo.	429,300	Prosecutor	Machine	635
Suffolk County	Riverhead, N.Y.	1,315,200	Prosecutor	Machine	775

Note: 35,181,400 is the total population for participating jurisdictions (15% of U.S. population); 1,099,419 is the average population of participating jurisdictions.

\*Indicates jurisdictions that participated in the study of 1983 sentencing outcomes.  
 \*\*Criminal Justice Information System.

Source: Population estimates (1984) were taken from the Bureau of Census' "Patterns of Metropolitan Area and County Growth."

court record systems were flexible enough to provide information by disposition date, some were not. The project also sought to utilize computerized data bases to provide the requisite data. In some instances that capacity lay within the courts, while in others it lay within the prosecutor's office or a county-wide criminal justice information system.

Fortunately, computerized print-outs were available from nearly all jurisdictions. However, few of those print-outs provided all of the information needed. In some instances the computer print-out provided only a listing of cases that fell within the scope of the study, leaving project staff with the task of collecting other information manually from individual court records. In other instances, manual coding was required on a very limited basis, such as checking cases that had incomplete offense codes, for example, an at-

tempted offense with no mention of the type of offense attempted.

**Case selection**

Despite the variety in data sources and data collection methods, the project attained a high degree of comparability across jurisdictions because a common set of decision rules guided all data collection. In addition to providing data only on those penal code citations specified by the project, each jurisdiction was instructed to use the following hierarchy in sorting cases involving multiple-offense convictions: homicide, rape, robbery, aggravated assault, burglary, larceny, and drug trafficking. Finally, each jurisdiction examined the charge on which the person was convicted, not the charge on which the defendant was indicted.

This last instruction means that if a person started off with a robbery

arrest but was eventually sentenced on a burglary, the study would classify that sentence as a burglary. If, on the other hand, the person started off with a burglary arrest, but was convicted of criminal trespass, the sentence would not fall within the scope of this study. These decision rules, which were followed by all participating jurisdictions, classify offenses in a way that reflects criminal justice operational responses to a given offense as much as the offense itself.

**Counting rules**

To ensure a standardized data collection method the project also detailed the counting rules to be used by coders collecting the data. All sentencing information was collected for each defendant, and a single record was generated for all sentencing transactions for that person on a given day. With sentences involving multiple-offense convic-

tions against one individual on one particular day, only one sentence record was generated. If the person was sentenced on two or more occasions for different offenses, separate records were created for each sentence. With those cases involving two or more defendants, a separate sentence record was made for each convicted felon.

There are a variety of circumstances under which an initial sentence can be changed. In some jurisdictions, judges retain custody over the convicted felon, which permits them to reconsider and change the initial sentence at their own discretion. A sentence or conviction may also be successfully appealed, resulting in the imposition of a sentence different from that initially handed down. Finally, for those receiving suspended or deferred sentences, failure to meet the conditions set down by the judge may result in the sentence being changed, for example, from probation to prison.

Such changes do occur. However, the project instructed each participating jurisdiction to provide information on the first sentence meted out after a person was convicted. The extent to which initial sentences are altered, including the circumstance of probation revocation, is beyond the scope of this study.

Participating jurisdictions were also alerted to the incidence of juridical orders deferring or suspending a portion or all of a sentence to incarceration. All such time (deferred or suspended) was subtracted from the incarceration term imposed.

#### Data elements

In its request for the collection of data on each sentence, the project distinguished between core informational items and optional ones. Core items, to be provided on every sentence, included the offense on which sentenced; the type of sentence imposed; and the term to which the person was sentenced. Optional items dealt with characteristics of the offense, case processing, and the defendant. These items included the

felon's name or unique identifier and sex; date arrested; date sentenced; court identification number; number of offenses on which convicted; whether convicted on the highest indictment offense; whether conviction was to a completed or an attempted offense; type of conviction (plea versus trial); whether consecutive sentences were imposed; and whether sentencing enhancements were invoked.

Clearly, the study focused on characteristics of the offense and case processing much more than on characteristics of the defendant. The principal reason for this was data availability. Information on the defendant, such as prior contact with the criminal justice system or work history, appears in record systems that are totally distinct from the courts' case records. These other records, such as presentence reports, tend to be privileged information. While more information on the defendant might be instructive, it was outside of the scope of this study.

#### Sampling

In most instances the project recorded all sentences falling within the scope of the study. However, with larger jurisdictions, generally those with populations of over one million, sampling was applied to the data received in order to ease the burden of data entry.

Sampling was used sparingly, or at very low rates, for homicide and rape but more frequently, and at higher rates, for higher-volume offenses such as burglary, larceny, and drug trafficking. The cases selected in the sampling procedure were weighted by the inverse of their sampling ratio. Overall, the 23,389 sentencing records used in this analysis have been adjusted to represent 71,231 weighted records. Appendix B provides two tables that detail the extent to which sampling was employed. One table presents the weight for each offense by jurisdiction, and the other provides the number of unweighted cases for each offense by jurisdiction.

#### Sentencing structure

The jurisdictions examined in this study encompass a range of sentencing structures. Most operate within an indeterminate sentencing structure, with varying levels of discretion afforded the State parole authority. Eight jurisdictions operate under sentencing structures in which the parole board has been abolished or limited to the review and determination of release dates for persons serving life terms. These latter jurisdictions, designated determinate sentencing jurisdictions, are as follows:<sup>5</sup> Dade County (Fla.), Denver (Colo.), Hennepin County (Minn.), Kane County (Ill.), King County (Wash.), Los Angeles County (Calif.), Mecklenburg County (N.C.), and San Diego County (Calif.).<sup>6</sup>

Two of these jurisdictions (Hennepin County and King County) operate within a framework of mandatory sentencing guidelines under which the sentencing judge is provided detailed instruction as to whether or not to incarcerate a convicted felon and for how long, depending upon the conviction offense and the offender's previous criminal history. Another jurisdiction, Philadelphia (Pa.), also has State legislated guidelines for sentencing, but these guidelines are broader than those found in Hennepin and King Counties.

<sup>5</sup>The word "determinate" can take on different meanings across the United States, including sentencing structures where the judge establishes a maximum but no minimum term. Although the judge does not set a minimum, there may be a parole board that has the power to release the person before serving the maximum term. This study makes the distinction between determinate and indeterminate sentencing structures on the basis of whether or not a parole board has the authority to review a judicial sentence for possible release prior to completion of the maximum or fixed term.

<sup>6</sup>Mecklenburg County is something of a hybrid regarding sentencing schemes. The State of North Carolina has adopted a determinate sentencing scheme but has retained the parole board and given it the authority to release first-time offenders convicted of nonviolent acts after serving 25% of their sentences.

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The concept of sentencing guidelines grew out of the application of parole board decisionmaking guidelines in the Federal justice system.<sup>7</sup> Multnomah County is in a State (Oregon) where the parole board's discretion in releasing inmates is so broad that no minimum term may need to be served. This discretion has been circumscribed, however, by the creation of an Advisory Commission on Prison Terms and Parole Standards, which has developed guidelines on parole release that are very similar to the sentencing guidelines in Hennepin and King Counties. The Oregon parole board must adopt and follow these guidelines.

Guidelines, whether directed at sentencing judges or parole boards, are intended to restrict discretion. Determinate sentencing structures also limit discretion by removing from the parole board the authority to determine the length of time a person should serve in prison and by narrowing the range in the terms to which judges may sentence convicted felons.

The debate over how much discretion should be afforded the sentencing process and by whom discretion should be exercised is an ongoing one. The jurisdictions in this study represent a broad range of experience that reflects the variety of responses to the sentencing debate.

<sup>7</sup>See *Guidelines for Parole and Sentencing: A Policy Control Method*, by Don M. Gottfredson, Leslie T. Wilkins, and Peter Hoffman (Lexington, Mass.: D.C. Heath and Company, 1978).

#### Aim of this report

The debate on discretion in sentencing has affected how legislatures design their State sentencing structures. This report does not argue the merits of one sentencing approach over another; rather, it demonstrates that across the United States differences in sentencing outcomes do exist among jurisdictions with various sentencing structures. The information presented in this report should forestall simplistic comparisons between jurisdictions that do not take differences in sentencing structure into account. This report also points out other factors that contribute to differences in sentencing outcomes among jurisdictions. The object of this sentencing analysis, therefore, is to describe sentencing outcomes without suggesting whether or how those outcomes might be altered.

## Chapter 2 Sentencing dispositions

Felony sentences reflect three major decisions that a judge must make regarding the convicted felon. The first decision is whether or not to incarcerate the adjudicated felon. If the decision is to incarcerate, then the judge must decide whether that person should be sent to a State facility (prison) or to a local facility (jail). Finally, the judge must determine the amount of time that a person must serve.

Figure 2.1 presents statistical data drawn from participating jurisdictions for the seven offenses covered by this study and illustrates the flow of the sentencing process outlined above. Three out of four felons (74%) sentenced on the seven felony offenses in this study are incarcerated. Prison constitutes the majority of sentences involving incarceration (45 out of 74 sentences).

The role of local correctional institutions (jail) in the processing of convicted felons, however, is substantial. Twenty-nine out of every 100 felons sentenced are incarcerated in a county jail. These felons should not be confused with those sentenced to a State facility and held in jail until space becomes available at the State institution. Jail is the correctional response for those so identified in this study. This finding is highlighted because convicted felons are usually viewed as a State responsibility.

Two types of jail sentences may occur: one with probation and the other without probation. Jail with probation (22%) occurs three times more frequently than jail without probation (7%). Sentences involving both jail and probation are counted twice in the initial breakdown of the data in Figure 2.1 so as not to lose the substantial share that these sentences contribute to probation. Indeed, probation sentences are almost evenly divided between those involving no jail (26%) and those with jail (22%).

Prison, jail, and probation make up 99% of the sentences meted out in felony court for the offenses under

Types of sentence imposed for a typical 100 cases disposed of in felony court, 1985

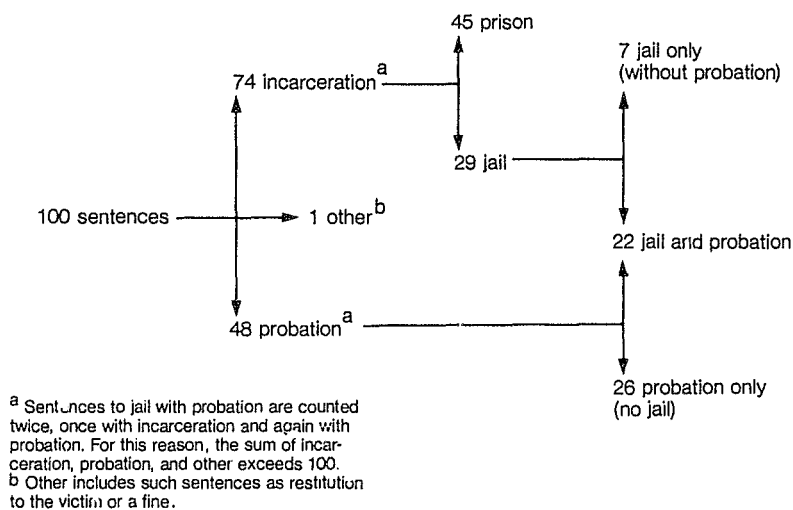


Figure 2.1

study here. The remaining 1% fall into a category labeled "other" that includes sanctions such as fines or restitution to the victim.<sup>1</sup> Such sanctions can also be imposed in conjunction with prison, jail, and probation sentences. The prevalence of the use of fines and restitution thus should not be equated with the percentage of cases receiving "other" sentences.

### Incarceration by type of offense

Two out of three sentences in this study involve the nonviolent offenses of burglary, larceny, and drug trafficking.<sup>2</sup> Consequently, the overall sentencing pattern is heavily

<sup>1</sup>These "other" sentences have been added to the "probation" category in the remaining tables presented in this report.

influenced by sentencing outcomes for these offenses.

Persons convicted of violent offenses are much more likely to receive prison sentences than those convicted of nonviolent offenses (table 2.1). This is especially true of persons convicted of homicide: nearly six out of seven (84%) receive prison sentences.<sup>3</sup> Imprisonment is also the dominant sanction imposed on persons convicted of rape (65%) and robbery (67%). Aggravated assault (42%) is the only violent of-

<sup>2</sup>The distribution of sentences by conviction offense is detailed in table 2.4.

<sup>3</sup>As detailed in appendix A, homicide includes negligent and reckless homicide in addition to murder and manslaughter offenses. Chapter 3 of this report provides sentencing outcome data on each of these subclassifications of homicide.

Table 2.1. Percent of sentences, by type of sentence and conviction offense, 1985

Conviction offense	Type of sentence imposed					Total
	Prison	Jail only	Jail and probation	Probation only	Other	
Total	45%	7%	22%	26%	1%	100%
Homicide	84	1	7	8	—	100
Rape	65	1	17	16	—	100
Robbery	67	7	13	13	—	100
Aggravated assault	42	7	26	24	1	100
Burglary	49	7	20	25	—	100
Larceny	32	10	19	38	1	100
Drug trafficking	27	6	34	32	1	100

Note: Percentages may not total to 100% because of rounding. —Less than 0.5%.

fense for which imprisonment is not imposed on a majority of the offenders.

Imprisonment occurs much less frequently for persons convicted of nonviolent offenses. While nearly half of those convicted of burglary are imprisoned (49%), prison is less commonly used for those convicted of larceny (32%) and drug trafficking (27%).

The low imprisonment rate for persons convicted of drug trafficking may be explained by the fact that drug trafficking includes "possession with intent" to sell, manufacture, or distribute. The threshold weight for "possession with intent" varies among jurisdictions but generally involves ounces, not pounds, so many drug trafficking cases involve small-time operators.

Drug traffickers are much more likely than persons convicted of the other offenses examined to receive jail sentences, usually accompanied by a probation sentence. Judges impose jail sentences on drug traffickers at a rate one-third greater than prison (40% versus 27%), with 34% receiving "jail and probation" and 6% receiving "jail only" sentences.

Jail is also a prevalent sanction for persons convicted of larceny (29%). Felony thieves receive a sentence of "jail and probation" 19% of the time, with an additional 10% receiving "jail only" sentences. Sentences to jail are prominent among persons convicted of aggravated assault (33%) and burglary (27%) as well.

Jail, either by itself or in conjunction with probation, is common among sanctions imposed by felony court judges, especially in sentencing persons convicted of nonviolent offenses. Persons convicted of violent offenses, on the other hand, are much more likely to be sentenced to prison than to jail.

Sentences of "probation only" rarely occur with persons convicted of violent offenses. Persons convicted of homicide receive "probation only" 8% of the time. The use of the

**Table 2.2. Number and percent of persons sentenced to prison, by conviction offense, 1985**

Conviction offense	Total number of persons sentenced	Number of persons sentenced to prison	Percent of persons sentenced to prison
Total	71,231	32,248	100%
Violent offenses	23,914	14,858	46%
Homicide	2,561	2,152	7
Rape	3,126	2,041	6
Robbery	12,232	8,170	25
Aggravated assault	5,995	2,495	8
Nonviolent offenses	47,317	17,390	54%
Burglary	18,046	8,785	27
Larceny	12,849	4,107	13
Drug trafficking	16,422	4,498	14

"probation only" sanction increases to 13% for robbery offenses and 16% for rape offenses. Nearly 1 out of every 4 persons (24%) convicted of aggravated assault, on the other hand, receives a "probation only" sentence. The most frequent use of "probation only" is found among the nonviolent offenses, especially larceny. "Probation only" is imposed 38% of the time on persons convicted of larceny, representing the most frequently used sanction for persons convicted of that offense.

**Systemic impacts**

The imprisonment rate for persons convicted of violent offenses is considerably higher than that for those convicted of nonviolent offenses, but the majority of persons entering prison in a given year are not necessarily convicted of violent offenses. Although a large proportion of persons convicted of homicide are sentenced to prison (84%), the

number of persons convicted of homicide (2,561) is small in comparison to the other offense categories (table 2.2). Larceny, for example, has a low imprisonment rate (32%) but many more persons are convicted of larceny (12,849) than of homicide. Consequently, there are more persons going to prison for larceny offenses (4,107) than for homicide offenses (2,152). The percentage of persons sentenced to prison for the nonviolent offenses of burglary, larceny, and drug trafficking (54%) is higher than that found for the violent offenses of homicide, rape, robbery, and aggravated assault (46%). This is because the number of sentences involving nonviolent offenses (47,317) is nearly double that found for persons convicted of homicide offenses (23,914).

Another aspect of the impact of sentencing outcomes on prison workload is the length of prison terms.

**Table 2.3. Estimated number and percent of prison bed-months, by conviction offense, 1985**

Conviction offense	Number of persons sentenced to prison	Average prison term	Estimated number of prison bed-months	Percent of prison bed-months
Total	32,248	85 months	2,741,100	100%
Violent offenses	14,858	117	1,738,400	64%
Homicide	2,152	188	404,600	15
Rape	2,041	157	320,400	11
Robbery	8,170	104	849,700	30
Aggravated assault	2,495	81	202,100	7
Nonviolent offenses	17,390	58	1,010,000	36%
Burglary	8,785	65	571,000	20
Larceny	4,107	46	188,900	7
Drug trafficking	4,498	56	251,900	9

Note: "Estimated number of prison bed-months" represents the number of persons sentenced to prison multiplied by the average prison term for each conviction offense. Numbers may not add to totals because of rounding.

Prison terms are much longer for persons sentenced on violent offenses than those sentenced on non-violent offenses (table 2.3). The average prison term for rape (157 months), for example, is nearly three and one-half times that found for larceny (46 months). Even though the amount of time served in prison is likely to be shorter than the sentence given, the prison term imposed by the judge nonetheless provides some insight into the duration of a person's stay in prison.

The amount of time a person occupies a prison cell is a major factor affecting prison workload and composition. Multiplying the number of persons sentenced to prison by the average prison term imposed provides a rough estimate of the relative distribution of prison bed-months between violent and nonviolent offenders. Persons convicted of violent offenses constitute 64% of prison bed-months compared to 36% for persons convicted of nonviolent offenses.

Examination of the percentages of persons sentenced to prison and their cumulative sentence times points out the critical role sentencing judges play in determining both volume and composition of prison workload. Judicial decisions regarding the use of jail and probation have similar impacts on correctional resources as well. Statistical measures of sentencing outcomes, therefore, are important in understanding not only felony court operations but also the impact of sentencing on the corrections system.

#### Offense distribution

Violent offense convictions constitute a minority (33%) of all sentences for the seven selected offenses (table 2.4). Homicide, rape, and aggravated assault together represent 16% of the sentences, with robbery, by itself, surpassing that percentage (17%). Burglary is the most prevalent conviction offense (25%). Sizable percentage shares are

also attributable to the nonviolent offenses of larceny (18%) and drug trafficking (23%).

This pattern in the distribution of conviction offenses generally holds for all participating jurisdictions. There are, nonetheless, some notable differences among jurisdictions. Baltimore City, Manhattan, and Philadelphia, for example, have the largest percentages of sentences for robbery convictions, with 30% or more of sentences attributable to that offense. In Essex and Los Angeles Counties, on the other hand, a large share of sentences are attributable to drug trafficking (35% and 34%, respectively). In both Erie and Mecklenburg Counties more than 40% of sentences are attributable to burglary offenses. In seven jurisdictions larceny convictions account for 30% or more of sentences: Baltimore County (51%), Jefferson Parish (38%), and Franklin, Kane, King, Lucas, and Maricopa Counties (30% to 36%).

Table 2.4. Percent of sentences for each jurisdiction, by conviction offense, 1985

Jurisdiction	Percent of all sentences for conviction offense of:							All cases
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	
Overall average	4%	4%	17%	8%	25%	18%	23%	100%
Baltimore City	6	3	30	6	29	9	17	100
Baltimore County	1	1	11	4	19	51	12	100
Dade County	4	2	17	9	30	23	14	100
Dallas County	5	7	16	7	33	23	9	100
Davidson County	7	6	13	8	28	26	12	100
Denver	5	3	13	13	35	6	25	100
Erie County	6	3	13	10	43	7	19	100
Essex County	4	3	18	14	15	11	35	100
Franklin County	4	4	17	6	17	31	22	100
Harris County	3	5	12	5	26	23	26	100
Hennepin County	2	14	14	13	30	20	7	100
Jefferson County	5	4	17	7	23	20	26	100
Jefferson Parish	3	2	11	4	25	38	18	100
Kane County	3	4	8	10	28	33	15	100
King County	3	7	4	11	34	30	10	100
Los Angeles County	4	5	16	9	23	10	34	100
Lucas County	4	4	11	9	12	36	25	100
Manhattan	4	1	35	4	15	14	28	100
Maricopa County	3	4	6	12	26	30	20	100
Mecklenburg County	5	1	11	8	48	13	14	100
Milwaukee County	4	12	18	1	28	12	24	100
Multnomah County	3	8	22	10	26	23	9	100
Oklahoma County	3	3	10	8	31	16	29	100
Orleans Parish	4	3	15	9	26	27	16	100
Philadelphia	3	5	39	14	23	12	5	100
San Diego County	4	4	12	16	32	18	13	100
St. Louis	2	5	12	8	36	29	7	100
Suffolk County	2	4	16	8	29	18	23	100

Note: Percentages may not total to 100% because of rounding.

As noted earlier, sentencing outcomes differ substantially for different conviction offenses. Consequently, in examining sentencing outcomes in a jurisdiction, a knowledge of its distribution of conviction offenses is important. Jurisdictions with high percentages of violent offense convictions will show more sentences to prison than will jurisdictions with high percentages of nonviolent offense convictions.

### The differential use of jail

Just as the use of incarceration varies for different conviction offenses, variation also exists in the use of incarceration among participating jurisdictions. The basic pattern of high imprisonment rates for homicide, rape, and robbery and lower imprisonment rates for larceny, aggravated assault, and drug trafficking tends to hold up across jurisdictions. The differences that manifest themselves in the use of prison are those of degree.

The most significant difference found among jurisdictions, however, is the use of jail. This report has classified participating jurisdictions into two distinct sentencing schemes: determinate and indeterminate. Determinate sentencing jurisdictions do not have a parole board while indeterminate sentencing jurisdictions do. Determinate sentencing jurisdictions utilize jail almost two and one-half times more frequently (45%) than indeterminate sentencing jurisdictions (17%) (table 2.5). Furthermore, determinate sentencing jurisdictions are much more likely to impose probation along with a jail term (40%) than to impose a jail sentence by itself (5%). Indeterminate sentencing jurisdictions, on the other hand, are almost as likely to impose a jail sentence by itself (8%) as in conjunction with probation (9%).

**Table 2.6. Percent incarcerated for each conviction offense, by sentencing structure and place of incarceration, 1985**

Conviction offense	Determinate sentencing structure			Indeterminate sentencing structure		
	Incarceration (jail and prison)	Prison	Jail	Incarceration (jail and prison)	Prison	Jail
Homicide	95%	83%	12%	90%	85%	5%
Rape	91	62	29	78	68	10
Robbery	95	68	27	82	66	16
Aggravated assault	85	39	46	65	44	21
Burglary	90	49	41	64	48	16
Larceny	80	27	53	52	34	18
Drug trafficking	83	20	63	52	34	18

The higher use of jail in determinate sentencing jurisdictions holds for each of the offenses under study here (table 2.6). The use of jail in determinate sentencing jurisdictions is most pronounced with nonviolent offenses as well as with aggravated assault. Burglary convictions in determinate sentencing jurisdictions have nearly an equal share of sentences to jail (41%) as to prison (49%). With aggravated assault convictions, more persons are sentenced to jail (46%) than to prison (39%). Even more dramatic differences, however, occur with larceny and drug trafficking. Persons convicted of larceny are almost twice as likely to go to jail as to prison (53% versus 27%), while persons convicted of drug trafficking are more than three times as likely to go to jail as to prison (63% versus 20%).

With indeterminate sentencing jurisdictions, on the other hand, there is a narrow range in the percentage of sentences to jail (16% to 21%) for five of the offense categories--robbery, aggravated assault, burglary, larceny, and drug trafficking. Furthermore, there is no instance where the use of jail exceeds that of prison.

The use of jail in determinate sentencing jurisdictions has two major consequences. The first is that it places a much heavier burden on local correctional facilities than that found with indeterminate sentencing jurisdictions. The other consequence involves one of the perennial debates that surround sentencing: the trade-off between certainty and severity of the sentence imposed. Although sentences are frequently less severe, a sentence to some form of incarceration is more certain in determinate sentencing jurisdictions than in indeterminate sentencing jurisdictions. Of the sentences meted out in determinate sentencing jurisdictions, 87% involve prison or jail; in indeterminate sentencing jurisdictions that figure is 65%. This higher certainty of incarceration extends to all of the conviction offenses studied.

### Jail usage by jurisdiction

Patterns in the use of jail differ substantially between determinate and indeterminate sentencing jurisdictions, but within each category of sentencing structure are jurisdictions that do not follow these overall patterns (table 2.7). For example, six of the eight determinate sentencing jurisdictions in this study demonstrate a heavy reliance on the jail sanction, with the use of jail ranging from 31% in Dade County to 57% in King County. Denver and Mecklenburg County are exceptions to this pattern. In Denver only 1% of felony sentences involve jail, while in Mecklenburg County the percentage of sentences involving jail is 5%.

**Table 2.5. Percent of sentences for determinate and indeterminate sentencing structures, by type of sentence, 1985**

Sentencing structure	Type of sentence imposed					Total
	Prison	Jail only	Jail and probation	Probation only	Other	
Determinate	42%	5%	40%	12%	1%	100%
Indeterminate	48	8	9	35	--	100

--Less than 0.5%.



Part of the explanation for the low use of jail in Denver lies in its State-supported community residential supervision program. This intensive community corrections program serves as an alternative to jail for some offenders by providing 24-hour supervision of persons sentenced to it. However, for the purposes of this study, sentences to the Denver community corrections program were coded as "probation only."

The low use of jail in Mecklenburg County, on the other hand, is attributable to the fact that felony matters are a State responsibility in North Carolina, and State correctional resources (prison and probation), not local correctional resources (jail), are used to deal with convicted felons.

Among the indeterminate sentencing jurisdictions, there is considerable variety in the use of jail in felony sentencing. Some jurisdictions, such as Davidson County (43%), Philadelphia (38%), and Suffolk County (38%), show a heavy use of jail. On the opposite end of the spectrum are the two jurisdictions from Texas, Dallas County and Harris County, where 1% or less of felony sentences involve jail. The reliance on State correctional resources for convicted felons evident in North Carolina appears to be just as strong in Texas.

There are no simple explanations for the variation in the use of jail among indeterminate sentencing jurisdictions. A number of factors are involved. One is the availability of resources at the State or local level. In some instances jail sentences may be imposed because

space is available there or because the State prison system is unable to take new prisoners due to Federal court orders that address crowded conditions. In Davidson County, Tennessee, for example, a Federal court order limiting the number of inmates in the State prison system has resulted in a heavier use of county facilities for incarcerating convicted felons.

In other instances State codes have been revised to permit judges to sentence felons to local jails for more than 1 year. In Louisiana, for example, a judge may sentence a person to up to 12 years in the parish (county) jail. But even where no State code revisions have taken place, judicial discretion is fairly broad when it comes to deciding the type of sentence to be imposed. A judge who feels that a sentence to prison might not be appropriate, but who nonetheless believes the person should do some time in an institution, has the option of making a jail term part of a split sentence that also includes a term of probation.

Table 2.7. Percent of sentences to incarceration for each jurisdiction, by place of incarceration, 1985

Jurisdiction	Percent of all sentences to:		
	Incarceration (jail and prison)	Prison	Jail
Overall average	75%	45%	30%
Determinate	87%	42%	45%
Dade County	89	58	31
Denver	44	43	1
Hennepin County	76	26	50
Kane County	82	40	43
King County	81	24	57
Los Angeles County	90	41	49
Mecklenburg County	60	55	5
San Diego County	93	41	52
Indeterminate	65%	48%	17%
Baltimore City	59	56	3
Baltimore County	57	36	21
Dallas County	65	63	1
Davidson County	84	41	43
Erie County	69	40	30
Essex County	63	41	22
Franklin County	*	58	*
Harris County	61	59	1
Jefferson County	65	56	9
Jefferson Parish	59	27	31
Lucas County	79	51	28
Manhattan	78	53	25
Maricopa County	60	36	24
Milwaukee County	61	34	27
Multnomah County	63	39	25
Oklahoma County	38	32	6
Orleans Parish	53	39	14
Philadelphia	71	33	38
St. Louis	57	42	15
Suffolk County	77	39	38

Note: Percents may not add to total due to rounding.  
 \*Data on persons sentenced to work release were not collected. Consequently, the information on the use of jail in Franklin County is incomplete and no entry is provided for total incarceration.

**Table 2.8. Percent of sentences to jail for each conviction offense, by jurisdiction, 1985**

Jurisdiction	Percent sentenced to jail for conviction offense of:							
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	All cases
Overall average	8%	18%	20%	33%	26%	29%	40%	29%
Determinate	12%	29%	26%	46%	41%	53%	63%	45%
Dade County	6	10	9	37	35	43	35	31
Denver	3	0	0	6	0	0	0	1
Hennepin County	17	47	37	53	56	51	56	50
Kane County	0	13	31	43	52	47	38	43
King County	13	40	3	67	65	58	63	57
Los Angeles County	13	28	31	46	42	56	68	49
Mecklenburg County	3	0	0	16	3	12	3	5
San Diego County	18	30	36	61	46	70	64	52
Indeterminate	5%	10%	16%	21%	16%	18%	18%	17%
Baltimore City	0	0	1	0	1	5	9	3
Baltimore County	0	0	16	9	25	24	16	21
Dallas County	0	1	1	3	2	0	0	1
Davidson County	20	20	10	45	46	57	65	43
Erie County	12	0	26	38	30	23	39	30
Essex County	8	8	4	17	26	25	32	22
Franklin County	5	0	1	2	0	2	3	2
Harris County	0	0	1	4	1	2	2	1
Jefferson County	3	4	8	7	9	18	6	9
Jefferson Parish	11	12	11	32	27	44	28	31
Lucas County	10	0	17	33	23	26	44	28
Manhattan	1	10	20	38	21	36	30	25
Maricopa County	15	37	24	31	23	23	22	24
Milwaukee County	15	24	29	39	18	27	39	27
Multnomah County	24	18	24	29	28	21	26	25
Oklahoma County	0	0	3	7	4	7	10	6
Orleans Parish	6	5	6	21	14	24	6	14
Philadelphia	2	21	38	33	49	42	40	38
St. Louis	0	4	3	14	20	20	7	15
Suffolk County	3	14	29	50	41	39	43	38

**Jail usage by offense**

An examination of the use of jail for each of the seven conviction offenses reveals fairly close adherence to the overall pattern among the determinate sentencing jurisdictions; that is, jail is more frequently imposed on nonviolent offenders than on violent offenders (table 2.8). Although this generally holds for the indeterminate sentencing jurisdictions as well, there are some notable exceptions. In Maricopa and Multnomah Counties the rate at which jail is invoked for violent offenses is not much different from that found for nonviolent offenses. In Multnomah County, for example, jail is imposed in 18% of rape sentences and 21% of larceny sentences.

**Average jail terms**

Overall, the average jail term imposed is 8 months (table 2.9). There is, however, variation among conviction offenses and jurisdictions. Jail terms for violent conviction offenses tend to be higher than those for nonviolent offenses. The average jail term for robbery convictions is 12 months. For homicide and rape convictions the average terms are 10 months each. While the average jail term for burglary is 10 months, there is a notable drop to 8 months for larceny convictions and to 7 months for drug trafficking convictions.

The tendency for jail terms to be higher for violent offense convictions is stronger among indeterminate sentencing jurisdictions than determinate sentencing jurisdictions. Jail terms for violent offense convictions among the indeterminate sentencing jurisdictions are 12 months for homicide, 14 months for rape, 15 months for robbery, and 11

months for aggravated assault. With the nonviolent offenses the average jail terms are 13 months for burglary, 10 months for larceny, and 8 months for drug trafficking.

Average jail terms for violent and nonviolent offense convictions are different in determinate sentencing jurisdictions, but the difference is not as great as that found in the indeterminate sentencing jurisdictions. Indeed, the range in average jail terms for violent and nonviolent offense convictions in determinate sentencing jurisdictions is rather limited, from 6 months for drug trafficking and larceny to 9 months for homicide and robbery. Furthermore, average jail terms for the determinate sentencing jurisdictions are substantially shorter than those found for indeterminate jurisdictions. The average jail term for determinate sentencing jurisdictions is 7 months as opposed to 11 months for indeterminate sentencing jurisdictions.

Table 2.9. Average jail term imposed for each conviction offense, by jurisdiction, 1985

Jurisdiction	Length of jail term for conviction offense of:							
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	All cases
Overall average	10 months	10 months	12 months	8 months	10 months	8 months	7 months	8 months
Determinate	9 months	8 months	9 months	7 months	8 months	6 months	6 months	7 months
Dade County	10	8	11	9	9	7	6	8
Denver	24	0	0	12	0	0	0	14
Hennepin County	6	9	10	8	6	5	4	7
Kane County	0	6	4	2	3	3	1	3
King County	7	5	6	4	4	2	2	3
Los Angeles County	9	8	9	8	9	8	6	7
Mecklenburg County	6	0	0	4	4	6	6	5
San Diego County	7	6	9	5	7	3	5	5
Indeterminate	12 months	14 months	15 months	11 months	13 months	10 months	8 months	11 months
Baltimore City	0	0	5	0	5	4	3	3
Baltimore County	0	0	11	20	21	9	11	12
Dallas County	0	6	1	2	8	0	0	6
Davidson County	24	29	41	25	37	26	27	30
Erie County	8	0	8	7	8	9	7	8
Essex County	6	12	9	7	7	9	8	8
Franklin County	6	0	2	6	0	6	5	5
Harris County	0	0	3	8	3	10	6	7
Jefferson County	12	12	8	12	11	10	10	10
Jefferson Parish	23	63	18	15	13	7	8	10
Lucas County	6	0	5	5	3	3	3	3
Manhattan	6	7	10	7	10	8	8	9
Maricopa County	10	11	7	6	5	4	5	5
Milwaukee County	7	6	8	5	6	7	4	6
Multnomah County	10	8	7	6	7	5	7	7
Oklahoma County	0	0	2	1	2	2	1	2
Orleans Parish	8	18	15	10	9	8	7	9
Philadelphia	23	28	22	20	22	23	24	22
St. Louis	0	6	6	9	7	8	0	7
Suffolk County	12	6	6	6	5	5	5	5

The indeterminate sentencing jurisdictions impose longer average jail terms than the determinate sentencing jurisdictions for each of the conviction offenses. However, the magnitude of those longer terms differs substantially among conviction offenses. The greatest difference occurs with rape convictions. The average jail term for rape in the indeterminate sentencing jurisdictions (14 months) is almost twice as long as that found for the determinate sentencing jurisdictions (8 months). The average jail term for drug trafficking convictions, on the other hand, has the smallest difference. The indeterminate jurisdictions have an average jail term for drug trafficking (8 months) that is only one-third longer than that found for determinate sentencing jurisdictions (6 months).

Among the determinate sentencing jurisdictions, nothing extraordinary is noted with regard to average jail terms. Among the indeterminate sentencing jurisdictions, on the other

hand, two stand out for their high average jail terms. In Davidson County, the average jail term is 30 months, with a range of from 24 months for homicide to 41 months for robbery. These high average jail terms are due largely to severe crowding in the Tennessee prison system. In Davidson County the distinction between a jail sentence and a prison sentence depends on the length of time the judge imposes, with the threshold between jail and prison being 4 years. Persons receiving sentences of less than 4 years go to the local correctional facility (the workhouse) and those sentenced to 4 or more years go to prison. This is not an ironclad rule, but the tendency is strong enough to have a dramatic impact on local correctional resources.<sup>4</sup>

<sup>4</sup> All sentences to incarceration in Davidson County that were 3-4 years in duration were checked. The case jacket was pulled to verify the place of incarceration.

The average jail term in Philadelphia is also long (22 months), with a range of from 20 months for aggravated assault to 28 months for rape. Unlike any other jurisdiction encompassed by this study, judges in Philadelphia impose a minimum as well as a maximum term on persons sentenced to jail. The average minimum works out to be slightly more than one-third of the maximum term. Because most persons sentenced to jail in Philadelphia tend to be released shortly after serving their minimum term, the average jail term overstates the time that sentenced felons serve in jail. Consequently, jail time in Philadelphia needs to be considered in light of the amount of time convicted felons are likely to serve (the minimum) in the institution.

**Probation by jurisdiction**

Probation is a broadly conceived sanction that attempts to deal with the offender in the community. Probationers may be left unsupervised, with the judicial admonition to stay out of trouble. Most probationers are supervised, but the level of supervision varies substantially from residential placement with 24-hour surveillance to monthly visits to the probation agency. In addition to the general conditions of probation, judges may impose special conditions such as restitution to the victim or compulsory participation in a drug program.

Probation is the most prevalent sanction used in felony sentencing (table 2.10). Nearly half of all persons (47%) sentenced in felony court for the seven conviction offenses under study here received probation. It is a sanction less often used for violent offenses, except for aggravated assault, than for non-violent offenses. For example, 1 out

of every 4 persons (26%) convicted of robbery received some form of probation in contrast to 2 out of every 3 persons (66%) convicted of drug trafficking. Not only is the rate of sentencing to probation lower for persons convicted of violent offenses, but violent offenses constitute a small part of the probation agency's workload. Persons convicted of homicide, rape, robbery, and aggravated assault constitute only 22% of all persons sentenced to probation in contrast to 78% for those convicted of burglary, larceny, and drug trafficking (data not shown).

As reported earlier, probation is a much more prominent sanction among determinate sentencing jurisdictions. Only two jurisdictions, Dade and Mecklenburg Counties, show less than a majority of their sentences involving probation (16% and 45%, respectively). Among the other jurisdictions, probation ranges from 56% of the sentences imposed

in Denver and Los Angeles to 73% of those imposed in Hennepin and King Counties.<sup>5</sup>

The range in the use of probation is much wider among the indeterminate sentencing jurisdictions, from a low of 21% of sentences in Davidson County to a high of 68% of sentences in Oklahoma County. Nevertheless, more than one-third of the indeterminate sentencing jurisdictions use probation in a majority of the felony sentences meted out for the seven offenses under study here.

The use of probation is most remarkable with persons convicted of drug trafficking. Not only does that offense have the highest share of sentences to probation among the

<sup>5</sup>In Denver, community residential corrections, a program that provides 24-hour supervision, is State-supported and, for the purposes of this study, is counted as a probation sentence rather than a sentence to local incarceration (jail). Therefore, the percentage of sentences to probation may be overstated.

**Table 2.10. Percent of sentences to probation for each conviction offense, by jurisdiction, 1985**

Jurisdiction	Percent sentenced to probation for conviction offense of:							All cases
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	
Overall average	14%	33%	26%	50%	44%	57%	66%	47%
Determinate	16%	37%	29%	54%	44%	60%	75%	52%
Dade County	11	13	5	19	15	20	27	16
Denver	18	5	25	51	59	66	81	56
Hennepin County	17	62	50	79	77	86	98	73
Kane County	18	19	38	51	62	69	71	59
King County	15	44	3	74	72	93	84	73
Los Angeles County	16	37	32	54	45	64	79	56
Mecklenburg County	21	14	17	56	43	53	72	45
San Diego County	22	34	38	73	49	82	69	58
Indeterminate	13%	30%	25%	47%	44%	56%	57%	44%
Baltimore City	10	39	36	20	41	70	57	42
Baltimore County	0	0	20	23	51	63	76	54
Dallas County	20	25	17	31	33	50	59	35
Davidson County	14	13	12	25	21	25	25	21
Erie County	12	9	31	52	35	48	66	41
Essex County	11	20	8	54	63	74	67	51
Franklin County	18	9	25	32	36	41	48	36
Harris County	10	30	11	38	37	45	53	39
Jefferson County	19	4	25	43	33	36	50	36
Jefferson Parish	33	6	17	52	38	61	63	49
Lucas County	15	0	17	33	24	64	63	47
Manhattan	2	12	21	43	19	40	33	27
Maricopa County	21	42	37	61	57	74	74	63
Milwaukee County	25	44	47	78	69	77	82	64
Multnomah County	27	57	42	72	55	80	79	61
Oklahoma County	6	23	13	69	78	82	79	68
Orleans Parish	17	7	23	54	47	68	64	50
Philadelphia	7	31	33	48	53	54	55	42
St. Louis	32	13	22	44	47	54	58	45
Suffolk County	6	31	37	55	54	64	58	52

Note: The data in this table reflect all probation sentences, that is, probation only and probation with jail.

seven conviction offenses, but in only four jurisdictions (Dade, Davidson, Franklin, and Manhattan Counties) does probation fail to account for a majority of the sentences imposed for drug trafficking.

### Imprisonment by jurisdiction

Prison sentences play a larger role in indeterminate sentencing jurisdictions than in determinate sentencing jurisdictions, where jail constitutes a key component in felony sentencing, but in both kinds of jurisdictions prison sentences are much more common for violent offenses than for nonviolent offenses. An examination of imprisonment rates for each conviction offense by jurisdiction generally supports these two patterns (table 2.11). There are, to be sure, some notable differences among jurisdictions with regard to the use of prison; however, one must be mindful of the broader perspective of incarceration that includes jail.

For example, the imprisonment rate in Baltimore County for persons convicted of burglary is 40% in contrast to the 59% found in Baltimore City. However, jail sentences are used for 25% of persons convicted of burglary in Baltimore County as opposed to 1% of those convicted of the same offense in Baltimore City. Similarly, Hennepin County evidences a very low imprisonment rate for persons convicted of drug trafficking (2%), but utilizes jail to deal with 56% of these offenders.

Although the use of prison varies among jurisdictions, there is a tendency for jurisdictions in the same State to show similar patterns of use. Where notable differences do occur, such as between Baltimore City and Baltimore County with respect to burglary, the reliance on jail helps to explain the difference. Another explanatory factor is the distribution of subclassifications within a general offense category. For example, there are armed and unarmed robberies and, as the next

chapter will demonstrate, these have quite different patterns in their sentencing outcomes.

### Prison terms

While practice may vary, the concepts of incarceration and probation do not change their meanings from one jurisdiction to another. Even the time component associated with jail and probation is relatively stable as one moves from jurisdiction to jurisdiction. Differences arise, however, when one begins to examine prison terms. The concept of time as it relates to prison terms has different meanings among participating jurisdictions based on what State codes permit with regard to correctional and parole board discretion, minimum terms, and time off for good behavior or "good time."

Table 2.11. Percent of sentences to prison for each conviction offense, by jurisdiction, 1985

Jurisdiction	Percent sentenced to prison for conviction offense of:							
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	All cases
Overall average	84%	65%	67%	42%	49%	32%	27%	45%
Determinate	83%	62%	68%	39%	49%	27%	20%	42%
Dade County	88	81	87	48	57	40	50	58
Denver	79	95	75	43	41	34	19	43
Hennepin County	83	38	50	19	23	13	2	26
Kane County	82	81	59	49	38	30	27	40
King County	83	55	97	24	24	3	15	24
Los Angeles County	83	62	65	42	52	30	18	41
Mecklenburg County	79	86	83	44	57	44	28	55
San Diego County	74	66	62	25	51	18	28	41
Indeterminate	85%	68%	66%	44%	48%	34%	34%	48%
Baltimore City	90	61	64	80	59	26	34	56
Baltimore County	100	100	75	74	40	25	15	36
Dallas County	80	74	82	66	64	50	41	63
Davidson County	71	74	80	33	37	23	16	41
Erie County	80	91	52	31	42	29	15	40
Essex County	87	80	91	38	33	18	20	41
Franklin County	74	91	74	65	64	55	37	58
Harris County	88	69	87	57	62	53	45	59
Jefferson County	77	92	69	50	59	47	43	56
Jefferson Parish	56	82	71	26	36	6	21	27
Lucas County	85	100	83	65	76	32	35	51
Manhattan	98	86	63	39	60	31	41	53
Maricopa County	79	58	63	39	42	26	24	36
Milwaukee County	75	52	52	22	30	16	16	34
Multnomah County	73	43	58	26	44	20	20	39
Oklahoma County	94	77	87	30	22	17	21	32
Orleans Parish	81	93	73	32	43	10	31	39
Philadelphia	92	61	42	32	19	16	12	33
St. Louis	64	80	76	43	37	26	39	42
Suffolk County	91	66	59	29	34	24	36	39

For example, while parole boards have discretionary release authority under indeterminate sentencing schemes, the scope of that discretionary power varies substantially from one State to the next. The chief mechanism for the control of parole board discretion is the use of minimum terms. Either the judge or the law specifies a minimum term of incarceration that must be served before a felon can be considered eligible for parole. The shorter the minimum (including no minimum at all) the more discretion afforded the parole board. Conversely, the longer the minimum the more constraints are imposed on the paroling authority. Under determinate sentencing schemes, of course, prison sentences are not subject to a second review by a parole board or other body.

Another distinguishing characteristic for these two types of sentencing schemes is how they deal with time in the setting of prison terms. The legislatively prescribed range of penalties is much narrower in determinate sentencing States than in indeterminate sentencing States. For example, in California, a determinate sentencing State, the prescribed penalty for robbery ranges from 2 to 6 years, but there is no parole board to permit inmates to leave prison before serving their judicially imposed sentence less good time. In Kentucky, an indeterminate sentencing State, the prescribed penalty for robbery ranges from 5 to 20 years, but the parole board can release inmates at any time during their prison terms. Undoubtedly the certainty in the amount of time to be served associated with determinate sentencing schemes is the major reason for this difference in approach to time.

Another factor that affects the time to which the imprisoned felon is sentenced is the practice known as good time. In all but two of the jurisdictions in this study (Oklahoma County and Philadelphia), State law details the rate at which prison terms can be reduced by the convict's good behavior in the correctional institution. The rate at which good time can be accumulated varies among jurisdictions, with average

sentence reductions ranging from 25% to 33%. (See appendix D for legislative provisions on good time.) Generally, good-time reductions affect only the maximum term to be served. Two States, however, Ohio (Franklin and Lucas Counties), and Texas (Dallas and Harris Counties), permit good-time reductions on the minimum term as well.

#### Average prison terms for burglary

To aid understanding of the impact of these different factors on a prison term, figure 2.2 illustrates how the average sentence for burglary can be affected by minimum terms, discretionary release mechanisms (such as parole board discretion and correctional official discretion or earned time), and the behavior of the inmate (good time). In presenting this information the jurisdictions are organized by the type of sentencing scheme under which they operate: determinate sentencing or indeterminate sentencing. Within each type, jurisdictions are ordered by the percentage of the minimum term that must be served before the convicted felon can be considered for release from prison.

The solid black bar in figure 2.2 represents the minimum term that must be served (in determinate sentencing jurisdictions this is the fixed term less good time). The white bar represents the discretionary authority of the parole board and includes earned-time credits awarded by correctional officials. Earned time is what constitutes the white bar for the determinate sentencing jurisdictions. Finally, the gray bar represents the amount of time that the sentence can be reduced due to good time. While there are instances in which good time applies to the minimum sentence (Dallas, Franklin, Harris, and Lucas Counties), in the interests of clarity, figure 2.2 does not show the impact of good time on the minimum term.

The average prison terms for burglary tend to be substantially higher for jurisdictions operating under indeterminate codes (82 months) than for those that operate under determinate codes (43 months). In indeterminate sentencing jurisdictions the average term for burglary ranges from 30 months in Baltimore City to 222 months in Lucas County. This contrasts with the more narrow range of 37 months (Los Angeles County) to 87 months (Mecklenburg County) found for the determinate sentencing jurisdictions.

#### Minimum terms

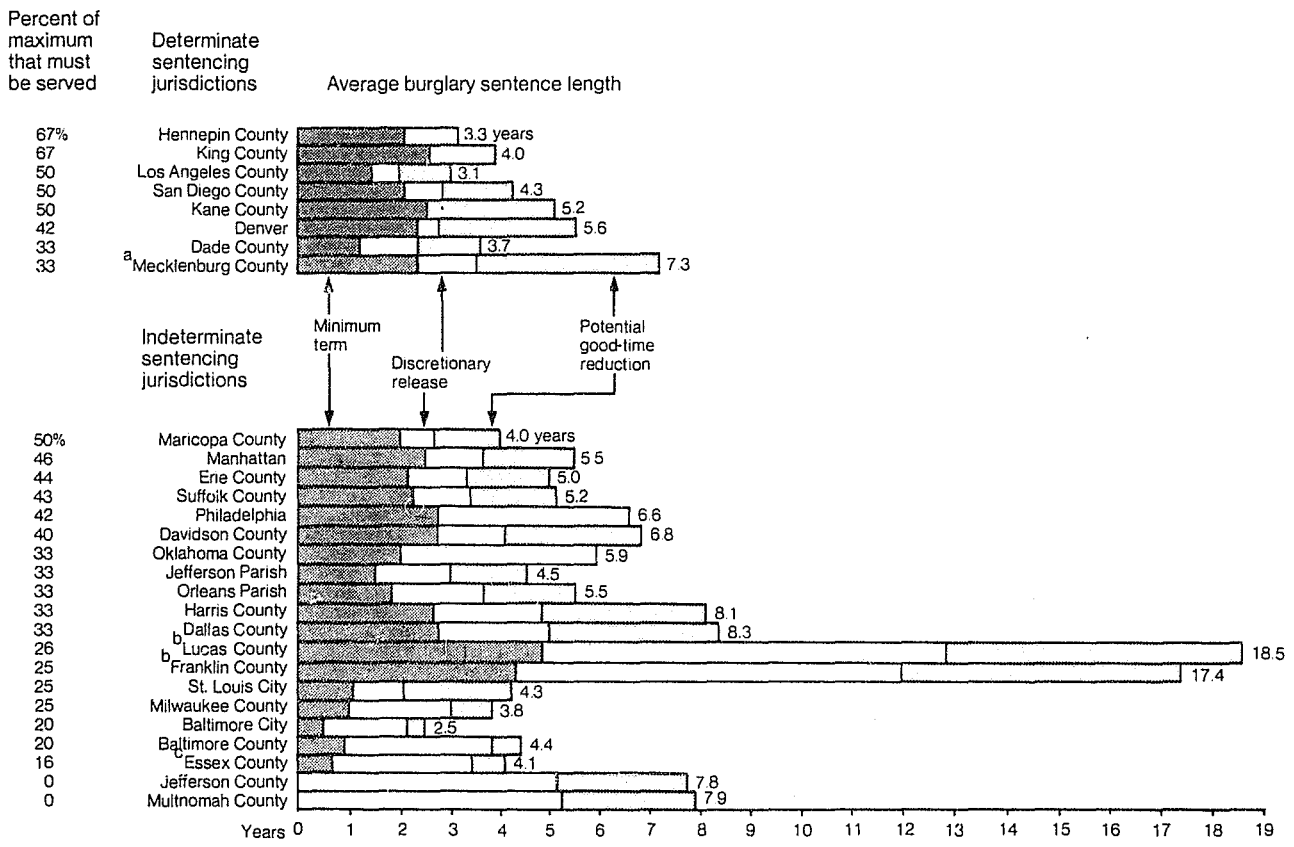
It is significant that the three determinate sentencing jurisdictions with the longest average terms for burglary (Denver, Kane, and Mecklenburg Counties) also have the most generous good-time rates (see appendix D). Denver and Mecklenburg Counties are also in States that permit the awarding of earned time based on the inmate's work or educational advancement. In Denver the earned time rate is 8%; in Mecklenburg County it is 17%.

Earned time is a factor in California (Los Angeles and San Diego Counties), where it can be awarded at the rate of 17%. In Minnesota (Hennepin County) and in Washington (King County) State legislation permits the awarding of good time at a rate of 33%.

The minimum amount of time that must be served by the sentenced burglar thus shows a much tighter range than that found for the average maximum sentence imposed. Furthermore, because of good-time and earned-time considerations, differences among these seven jurisdictions in the amount of time actually served are likely to be measured in months rather than in years.

Indeterminate sentencing jurisdictions show a pattern similar to that found for determinate sentencing jurisdictions: There is a tendency for jurisdictions with high minimums to have lower average prison terms than those jurisdictions that have low or no minimums. Maricopa County, with its minimum of 50%, tends

**Average sentence for burglary and the relative impacts of discretionary release and good-time credits, by jurisdiction, 1985**



<sup>a</sup> First-time offenders may be granted parole after serving 25% of their sentence.

<sup>b</sup> Ohio enacted major changes in sentencing laws, which have been in effect since July 1, 1983, and greatly increased sentences.

<sup>c</sup> Judges set a minimum term in only 29% of the burglary sentences. In the other cases there is no minimum that must be served.

Figure 2.2

to have a high average prison term, and the discretion afforded the parole board tends to be narrow. In Lucas and Franklin Counties, on the other hand, average prison terms for burglary are very long (222 and 209 months) but minimum terms are fairly low (25% of the maximum). In addition, Ohio law permits the awarding of good time against the minimum term to be served.

These differences in average sentence length across jurisdictions probably are attributable to the different levels of certainty that an incarcerated felon will serve a minimum amount of time. The

longer sentences in jurisdictions where the minimum terms are low or nonexistent may represent the judge's only opportunity to impress the parole board with the seriousness of a defendant's offense.

Focusing on the average prison term imposed, therefore, can be misleading. More useful information can be gained by looking at the minimum term that must be served to gauge how much time a burglar is likely to serve. An examination of minimum terms in the indeterminate sentencing jurisdictions reveals a tight range similar to that found for

the determinate sentencing jurisdictions. Consequently, the prospective average time served by imprisoned felons, as measured indirectly through the minimum term, may be much less disparate than the impression received in viewing the average maximum terms.

Table 2.12. Average prison term imposed for each conviction offense, by jurisdiction, 1985

Jurisdiction	Average prison term imposed for conviction of:					
	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking
Overall average	157 months	104 months	81 months	65 months	46 months	56 months
Determinate	111 months	67 months	62 months	43 months	30 months	34 months
Dade County	147	96	75	44	36	44
Denver	183	97	77	67	51	43
Hennepin County	73	57	63	39	21	21
Kane County	83	85	76	62	32	58
King County	80	84	51	48	51	34
Los Angeles County	112	57	60	37	24	32
Mecklenburg County	178	151	65	87	80	52
San Diego County	104	59	47	52	27	35
Indeterminate	189 months	127 months	96 months	82 months	52 months	67 months
Baltimore City	115	84	155	30	48	35
Baltimore County	207	105	146	53	24	43
Dallas County	157	185	72	100	49	109
Davidson County	266	170	146	82	70	145
Erie County	143	98	59	60	41	47
Essex County	130	126	74	49	42	38
Franklin County	301	237	116	209	16	61
Harris County	234	150	96	97	68	80
Jefferson County	238	134	101	93	58	79
Jefferson Parish	202	121	47	54	36	61
Lucas County	281	203	115	222	23	44
Manhattan	177	85	63	66	39	52
Maricopa County	126	103	76	48	46	62
Milwaukee County	126	70	59	46	43	41
Multnomah County	255	131	120	95	62	76
Oklahoma County	153	210	109	71	81	32
Orleans Parish	319	143	166	66	27	91
Philadelphia	165	111	98	79	50	67
St. Louis	194	184	115	51	41	70
Suffolk County	159	100	73	62	49	50

Note: Prison terms for homicide are presented separately in table 2.13.

### Prison terms by jurisdiction

The examination of how differently time is viewed in determinate and indeterminate sentencing jurisdictions provides a frame of reference for understanding the average prison terms imposed in felony sentencing across the United States. The determinate sentencing jurisdictions consistently show lower average prison terms than do indeterminate sentencing jurisdictions (table 2.12). Furthermore, in nearly all jurisdictions, persons convicted of rape or robbery receive longer average prison sentences than those convicted of larceny or drug trafficking.

Analysis of average prison terms gives the impression of volatility in sentencing, but this is attributable primarily to differences in State penal codes and sentencing guidelines. Average prison terms for jurisdictions in the same State show

much more consistency. The three jurisdictions in New York State (Erie, Manhattan, and Suffolk Counties), for example, show only minor differences in the average prison terms imposed for each conviction offense. An examination of average prison terms for persons convicted of drug trafficking illustrates this point. Manhattan has the longest average prison term (52 months), but that is only 5 months longer than that found for Erie County (47 months), which is the lowest of the three. Suffolk County is slightly higher than Erie County with an average prison term of 50 months for persons convicted of drug trafficking.

There are larger differences between jurisdictions in some other States but these may be explained by the differential use of jail (as with the difference between Baltimore

City and Baltimore County in average prison terms for burglary) or the distribution of the subclassifications of offenses within a general offense category (such as between forcible rape and statutory rape). Overall, the similarity in prison sentences in jurisdictions within the same State is much more striking than the occasional differences that surface.



### Prison terms for homicide

Prison terms for homicide are presented separately from those of other offenses because of the prevalence of life terms associated with homicide convictions. One out of four persons (25%) convicted of homicide receives a life sentence (table 2.13).

Imposition of the death penalty is a rare occurrence in felony sentencing. Only 17 persons in this study received this sentence, and all were convicted of homicide. The death penalty, imposed in only 1% of the prison sentences for homicide convictions in this study, was invoked in 9 of the 28 participating jurisdictions.

A sentence to life imprisonment or the death penalty is qualitatively different from a prison sentence quantified by the judge. Consequently, rather than assigning a quantitative value to such sentences, the project chose to present them separately. A product of this decision, however, is an understatement of the average prison term imposed on persons convicted of homicide. This understatement does not affect homicide's standing as having the highest average prison term among the seven felony offenses under study here, but it does affect the average prison terms for homicide shown for some jurisdictions.

The high average prison term for persons convicted of homicide in Hennepin County (166 months) is used to illustrate this observation. This average term is substantially higher than that found in most other determinate sentencing jurisdictions. Life sentences, however, are rarely imposed in Hennepin County, with only 7% of persons convicted of homicide receiving such a sentence. In San Diego County, on the other hand, 39% of persons convicted of homicide receive life sentences, a fact that contributes to its low average prison term for persons convicted of homicide (80 months).

Table 2.13. Percent of homicide conviction sentences for each type of prison sentence imposed, by jurisdiction, 1985

Jurisdiction	Percent of homicide sentences to:			Average prison term
	Life term	Death penalty	Less than life term	
Overall average	25%	1%	74%	188 months
Determinate	28%	—	72%	140 months
Dade County	19	3	78	226
Denver	23	0	77	92
Hennepin County	7	0	93	166
Kane County	22	11	67	171
King County	16	0	84	144
Los Angeles County	30	0	70	123
Mecklenburg County	13	0	87	122
San Diego County	39	0	61	80
Indeterminate	24%	1%	75%	221 months
Baltimore City	19	0	81	221
Baltimore County	64	0	36	183
Dallas County	16	1	82	348
Davidson County	29	2	69	264
Erie County	35	0	65	141
Essex County	29	2	69	201
Franklin County	60	7	33	240
Harris County	13	2	85	295
Jefferson County	17	0	83	204
Jefferson Parish	13	0	87	138
Lucas County	12	0	88	142
Manhattan	35	0	65	164
Maricopa County	8	1	91	97
Milwaukee County	17	0	83	161
Multnomah County	46	0	54	222
Oklahoma County	42	0	58	284
Orleans Parish	46	3	51	145
Philadelphia	17	0	83	167
St. Louis	43	0	57	176
Suffolk County	40	0	60	198

—Less than .5%.

Life sentences are usually reserved for the most serious subclassification of homicide—murder. Quantified terms are much more likely to be imposed for manslaughter and negligent homicide. Consequently, not only does the exclusion of life sentences in the computation of average prison terms for homicide deflate that overall measure, but the average prison term produced reflects that of the less serious forms of homicide in those jurisdictions with high percentages of life sentences. Two measures, therefore, need to be taken into account when examining prison terms for homicide convictions within a jurisdiction: the share of sentences involving life terms and the average prison term imposed.

### Life sentences

As noted above, life sentences constituted 25% of the prison sentences meted out in homicide convictions. Among all seven felony conviction offenses under study, life sentences were a factor in only 3% of the prison sentences (data not shown). Persons convicted of rape or of drug trafficking and sentenced to prison received life terms only 4% of the time, and in no instance did a person convicted of larceny receive a life sentence. Because of the small share of life sentences associated with conviction offenses other than homicide, there is miniscule skewing of the data on average prison terms imposed for these other offenses.

An examination of the distribution of life sentences by conviction offense reveals that more than half (53%) of the life sentences imposed are for homicide convictions (table 2.14). The next highest percentage of life sentences is attributed to drug trafficking (19%). Nearly all (97%) of these life sentences for drug trafficking arise in the New York State jurisdictions of Erie, Manhattan, and Suffolk Counties.<sup>6</sup> Life sentences for drug traffickers, however, are quite different from those found for homicide. In the three New York State jurisdictions, the average minimum term imposed by judges in conjunction with a life sentence is only 49 months for persons convicted of drug trafficking in contrast to a minimum of 264 months for those convicted of homicide.

Robbery accounts for 12% of the life sentences imposed in the jurisdictions studied. In some States, a life sentence is a permissible sanction for a robbery conviction, but many of the life sentences for robbery are attained through the authority granted under habitual offender laws rather than the legislated sanction for that offense. This is also the case for life terms associated with burglary.

While life and death sentences constitute only 4% of all prison sentences meted out for the crimes under study here, one should not lose sight of their cumulative effect on prison populations. Though most life sentences have the potential for release on parole, the minimum that must be served is more than 15 years in most States, and only 2 States in this study (Wisconsin and Maryland) permit the application of good time to accelerate the parole eligibility date.

<sup>6</sup>This is a product of the so-called Rockefeller Drug Law that was passed in the early 1970's.

Table 2.14. Percent and number of sentences to life imprisonment, by conviction offense, 1985

Conviction offense	Percent of sentences to life imprisonment	Number of sentences to life imprisonment
Total	100%	1,018
Homicide	53	542
Rape	9	90
Robbery	12	122
Aggravated assault	2	22
Burglary	4	44
Larceny	0	0
Drug trafficking	19	198

Note: Percentages may not total to 100% because of rounding.

### Summary

The differential use of sanctions across offenses reflects the various correctional strategies for dealing with convicted felons. Prison and jail sanctions are the principal responses to violent offenses, whereas nonviolent offenses evoke a mix of incarceration and probation. Higher incarceration rates and longer average prison terms are found for the violent offenses of homicide, rape, robbery, and aggravated assault.

This chapter underscores the impact of sentencing structures on sentencing outcomes. Determinate sentencing jurisdictions manifest a heavier reliance on jail than that found for indeterminate sentencing structures, although jail terms in determinate sentencing jurisdictions tend to be shorter.

Finally, even though correctional resources are addressed only indirectly in this study, their availability does affect sentencing outcomes. For example, persons are sentenced to community corrections in Denver because that program is funded and is intended to relieve the workload of the Colorado prison system. In Davidson County, on the other hand, many persons are sentenced to jail because of a Federal court order limiting the number of admissions to Tennessee's State prison system due to the crowded conditions there. Judges must take into account the availability of correctional resources in sentencing.

**Chapter 3**  
**Legal and offense characteristics**

The general crime categories discussed in earlier chapters can contain within them a wide range of circumstances. This chapter explores the subclassifications of selected crime categories as well as various characteristics of the conviction of offense, including whether the offense for which the person was sentenced was the original one or a lesser offense. Such factors are examined to assess their impacts on sentencing outcomes as well as the differences they generate in average prison terms imposed.

**Subclassification**

Most State penal codes recognize aggravating circumstances that can occur within a general crime category. For example, many penal codes specify the presence of a weapon during a robbery as an aggravating factor that merits a more severe penalty than a robbery in which no weapon was used. Such differentiations among subclassifications of a general crime category are usually embedded in the penal code citation. For example, an armed robbery in Minnesota is classified as a section 609.245 offense as opposed to a 609.24 offense, which designates a strong arm robbery (no weapon). The sentence range for armed robbery in Minnesota is 24 to 96 months in contrast to the range of 18 to 54 months for strong arm robbery.

This study drew upon such information whenever it was available from a State penal code citation. This chapter begins with an analysis of sentencing outcomes for three of the seven felony offenses examined in this report: homicide, robbery, and burglary.

While weapon use can constitute an aggravating factor in robbery, the offender's intent provides the springboard for differentiating among types of homicide. Not all homicides are tried as murders.

Penal codes differentiate among homicides where there is intent (murder), where there is no premeditation (manslaughter), and where the death is attributable to negligence or recklessness (negligent homicide).

This last category generally includes vehicular homicides. The legislated sanction for these different types of homicide varies substantially from 1 year of imprisonment to the death penalty.

Many penal codes also differentiate between residential and nonresidential burglaries. When this distinction is made, the penal code usually provides for harsher sanctions for residential burglaries than for burglaries of nonresidential structures. In addition, a number of jurisdictions have tougher provisions for those instances where the burglar confronts the victim or is armed.

While this last type of burglary usually has the requisite criteria for being designated a robbery, the study elected to classify these crimes as burglaries because State penal codes tend to deal with these circumstances together, making it impossible to identify those burglaries in which a confrontation with the victim took place.

An armed burglary does not always involve confrontation with the victim. For example, if an armed burglar is arrested after leaving a residence without coming into contact with the victim, then the burglar may be charged with "armed burglary."

The subclassifications within each of these three offense categories

exhibit substantial variation in the types of sentences imposed (table 3.1). Under homicide, 93% of all murder convictions result in prison terms, with only 4% receiving probation.

Although all murder convictions might be expected to result in imprisonment, in some States the classification of murder includes murder in the second, third, and fourth degrees, while in other States these offenses would be classified as manslaughter.

In Colorado, for example, second degree murder is characterized as "unlawful killing without premeditation and deliberation" [Washington v. People, 158 Colo. 115, 405, p. 2d, 735, (1965)]. Such differences in the definition of murder among the States do not obscure the substantial variation in sentencing outcomes among murder, manslaughter, and negligent homicide.

While 79% of manslaughter cases receive prison sentences, this imprisonment rate is 14 percentage points lower than that for murder. The differences between murder and negligent homicide are even more dramatic. Only 43% of the negligent homicide cases result in sentences to prison. On the other hand, jail is a very prominent sentence for persons convicted of negligent homicide, with 41% receiving that sanction. These jail sentences are most often

**Table 3.1 Percent of sentences by sentence type and the average term imposed for the subclassifications of homicide, robbery, and burglary, 1985**

Conviction offense	Percent of sentences to:					Average prison term
	Total	Probation*	Probation and jail	Jail only	Prison	
<b>Homicide</b>						
Murder	100%	4%	2%	1%	93%	237 months
Manslaughter	100	11	8	1	79	118
Negligent	100	16	34	7	43	51
<b>Robbery</b>						
Armed	100%	12%	4%	1%	83%	146 months
Unarmed	100	25	9	7	59	85
<b>Burglary</b>						
Armed	100%	15%	11%	1%	73%	96 months
Residential	100	18	23	3	56	67
Nonresidential	100	23	19	10	47	46

Note: This table presents data only for those cases where the distinction between the subclassifications could be made. This occurred for 92% of the homicides, 39% of the robberies, and 50% of the burglaries. Percentages may not total to 100% because of rounding.  
 \*Probation includes "other" sentences.

imposed in conjunction with probation (34%). Nearly all persons convicted of homicide receive some form of incarceration, but the place of incarceration varies.

Not only do sentencing outcomes vary across the subclassifications of homicide, but for those receiving prison sentences, the average term imposed differs widely as well. The average prison term for murder (not including life sentences) is nearly 20 years (237 months). The average term for manslaughter (118 months) is half that for murder, while the average term for negligent homicide (51 months) is nearly one-fifth that for murder.

Sentencing outcomes for the subclassifications of robbery also show substantial differences, with the more serious subclassification treated more harshly at sentencing. The subclassification of armed robbery shows a much higher percentage of sentences involving prison (83%) than does unarmed robbery (59%). In addition, the average prison term for armed robbery is more than two-thirds higher (146 months) than that found for unarmed robbery (85 months). Finally, jail sentences are more prominent for unarmed robbery (16%) than for armed robbery (5%).

These differences in sentencing outcomes persist with the subclassifications of burglary. Armed burglary evidences the highest rate of prison sentences (73%) among the subclassifications of burglary as well as the longest average prison term (96 months). In addition, a notable difference exists between residential and nonresidential burglaries in the incidence of prison sentences. Prison is invoked in 56% of sentences for residential burglary and 47% of sentences for nonresidential burglary. Furthermore, the average prison term for residential burglary (67 months) is nearly 50% longer than that imposed for nonresidential burglary (46 months). The use of jail does not vary much between these two burglary subclassifications. Persons convicted of residential burglary receive jail sentences 26% of the time, which is only slightly less than that found for persons convicted of nonresidential burglary (29%).

These differences in sentencing outcomes and average prison terms imposed among the subclassifications of homicide, robbery, and burglary are not unexpected. Penal codes are written to take into account factors that can aggravate or mitigate the circumstances of a crime. The findings here only underscore the fact that sentencing is guided by law and that distinctions made in the law are reflected in the sentencing practices of judges.

#### Completed and attempted offenses

Another legal aspect of the conviction offense that can affect sentencing is whether or not the crime was completed. Of principal significance here is that the State penal codes of nearly all participating jurisdictions include provisions that lower penalties for persons convicted of attempted offenses. Many States have felony gradations (one to five or A to E, for example), with each gradation carrying a different penalty range. If the crime is adjudicated as an attempted or inchoate offense, the penal code usually specifies that the criminal penalty be lowered by one or more gradations.

In Arizona, for example, armed robbery is a Class 2 felony. The presumed sentence for armed robbery by a first-time offender is 7 years. If the charge is attempted robbery, however, Arizona law classifies the offense as a Class 3 felony, which carries a presumed sentence of 5 years. Other State codes provide for even greater reductions in the potential maximum sentence when an attempted offense is involved. The penal code for Wisconsin cuts the potential maximum sentence in half if the crime is adjudicated as an

attempt, while in Colorado an attempted offense is reduced to the lowest felony grade.

An analysis of robbery and burglary sentences illustrates the effect on sentencing outcomes of conviction on an attempted offense as opposed to a completed one. The differences in sentencing outcomes in each offense category are substantial (table 3.2). The imprisonment rate is nearly 50% higher for completed offenses of both robbery and burglary. The imprisonment rate for completed robberies is 67% compared to 46% for attempted robberies. Similarly, the imprisonment rate for completed burglaries is 48% compared to 34% for attempted burglaries.

Another dimension of sentencing outcomes for completed and attempted offenses is the use of jail. Jail is a prominent sentence for attempted robbery, with 36% of persons convicted of that offense receiving that sanction, compared to only 21% of persons convicted of completed robberies (data not shown). The total incarceration rates for attempted and completed robberies, however, are nearly equal -- 80% for attempted robberies compared to 88% for completed robberies.

With burglary, on the other hand, jail is imposed just about equally for the two categories. Persons convicted of attempted burglary receive jail sentences 34% of the time, and those convicted of completed burglary receive jail sentences 33% of the time.

Table 3.2. Percent of sentences to prison and average prison term imposed for completed and attempted robberies and burglaries, 1985

Conviction offense	Percent of prison sentences where offense was:		Average prison term where offense was:	
	Attempted	Completed	Attempted	Completed
Robbery	46%	67%	60 months	95 months
Burglary	34	48	44	55

Note: This table presents data only for those cases where the distinction between completed and attempted offenses could be made. This occurred for 86% of the robberies and for 86% of the burglaries.

Completed offenses also are associated with longer terms. This is especially the case with robbery. The average prison term for completed robberies (95 months) is more than 50% longer than that for attempted robberies (60 months). Although the average prison term for completed burglaries (55 months) is longer than that for attempted burglaries (44 months), the percentage difference (25%) is only half that found between the two robbery categories.

Only one-third of the sentences studied contained information on the subclassifications of robbery and burglary along with information on whether the offenses were completed or attempted. Nevertheless, an analysis of those cases illustrates the effect of these two legal characteristics on the likelihood of imprisonment and average prison terms imposed.

The percentage of cases receiving prison sentences is higher for those convicted of a completed armed robbery (85%) than for those convicted of an attempted armed robbery (73%, table 3.3). To a lesser degree, differences also exist within the unarmed robbery subclassification. Completed unarmed robberies have a higher percentage of sentences to prison (58%) than attempted unarmed robberies (51%).

Among the subclassifications of burglary, even more substantial differences occur in sentencing outcomes along the dimension of completed versus attempted offenses. Completed residential burglary has a much higher imprisonment rate (59%) than attempted residential burglary (38%), and this persists for completed and attempted nonresidential burglaries as well (50% versus 24%).

For both robbery and burglary, whether the offense was completed or attempted has a less significant effect on average prison terms than on imprisonment rates. Minimal differences are found for residential burglary (54 months versus 57 months) and no difference for un-

**Table 3.3. Percent of sentences to prison and the average prison term imposed for the subclassifications of robbery and burglary, by attempted and completed crimes, 1985**

Conviction offense	Percent of prison sentences where offense was:		Average prison term where offense was:	
	Attempted	Completed	Attempted	Completed
Robbery				
Armed	73%	85%	82 months	147 months
Unarmed	51	58	75	75
Burglary				
Residential	38%	59%	54 months	57 months
Nonresidential	24	50	27	38

Note: This table presents data only for those cases where the distinction between completed and attempted offenses for the subclassifications of the offense could be made. This occurred for 30% of the robberies and 42% of the burglaries.

**Table 3.4. Percent of multiple offense conviction cases, by conviction offense, 1985**

Conviction offense	Number of conviction offenses				
	One	Two	Three	Four or more	Total
Total	75%	16%	5%	4%	100%
Homicide	69	16	8	7	100
Rape	57	21	9	13	100
Robbery	63	22	7	8	100
Aggravated assault	75	16	5	4	100
Burglary	75	17	5	3	100
Larceny	82	12	3	3	100
Drug trafficking	83	12	3	2	100

Note: This table is based on those sentences where the number of conviction offenses could be ascertained, which occurred in 93% of the sentences.

armed robbery (75 months for both attempted and completed offenses). However, the average prison term for completed armed robberies (147 months) is about 75% greater than for attempted armed robberies (82 months). There is also a sizable difference though smaller between the average prison terms for completed nonresidential burglaries (38 months) and attempted nonresidential burglaries (27 months).

As with the distinctions made among the various subclassifications of an offense, the sentencing outcomes for completed as opposed to attempted offenses reflect the different degrees of severity accorded them in the penal code.

**Number of conviction offenses**

Multiple-offense convictions can occur under two different circumstances. In one situation persons can be charged with and convicted of two or more offenses committed during one incident, for example

burglary and theft. In the other situation persons can be convicted of two or more offenses that they committed on two or more separate occasions, for example, a burglary in the first incident and a robbery in the second.

In either event, multiple-offense convictions in felony court are the exception rather than the rule. In 75% of felony sentences the person is convicted of only one offense (table 3.4). In an additional 16% of cases the person is convicted of two offenses. In only 5% of cases are there convictions on three offenses, and an additional 4% involve convictions on four or more offenses.

Multiple-offense convictions occur much more frequently for violent offenses, especially rape. Forty-three percent of rape sentences involve multiple-offense convictions. Robbery and homicide sentences also evidence a high incidence of multiple-offense convictions (37% and 31%, respectively).

The number of conviction offenses significantly affects the likelihood of receiving a prison sentence as well as the length of the prison term. There is a consistent increase in the imprisonment rate as the number of conviction offenses increases (table 3.5). The imprisonment rate increases from 39% with a single offense conviction to 80% for four or more conviction offenses. In a similar fashion, the average prison term more than doubles from 73 months to 150 months between those convicted of a single offense and those convicted of four or more.

As noted earlier, multiple-offense convictions occur more frequently with violent offenses than with nonviolent offenses. The increase in imprisonment rate as the number of conviction offenses increases may be attributable to the higher proportion of violent offenses among multiple-offense convictions. The pattern is strong for each of the violent offenses. It also holds up quite well for nonviolent offenses, especially for burglary (table 3.6). The average prison term for burglary nearly doubles between burglaries involving a single conviction offense (58

months) and those involving four or more conviction offenses (112 months).

#### Consecutive terms

If a person is convicted of two or more offenses, the judge must decide whether to sentence the person to concurrent or consecutive terms. Concurrent means that the person is able to satisfy the time requirements on both or all offenses at the same time, while a consecutive sentence is additive. For example, if a person is sentenced to 2 years in prison for each of two offenses and the judge makes the sentences concurrent, the prison term would be 2 years. If the sentences are consecutive, the prison term would be 4 years.

This study elected to deal with consecutive sentences only where there were cases with multiple-offense convictions. This analysis, therefore, does not include those cases in which the judge makes a sentence consecutive with sentences previously meted out. Also, for the purposes of this analysis, consecutive sentencing is examined only in the context of prison sentences.

Figure 3.1 illustrates the flow of cases leading to eligibility for consecutive sentencing (persons convicted of more than one offense and sentenced to prison) and the frequency with which consecutive sentences are imposed. Consecutive sentences constitute a small share (2%) of all sentences imposed.

Furthermore, even when the prerequisite conditions for consecutive sentencing are met, they are rarely imposed. Only 13% of those persons convicted of multiple offenses and sentenced to prison received consecutive sentences.

Although consecutive sentences are rarely imposed, they nonetheless have a substantial impact on sentencing due to the much longer prison terms that they generate. The average prison term for persons receiving consecutive terms (189 months) is twice that found for persons receiving concurrent terms (93 months) (table 3.7).

Clearly, the presence of multiple-offense convictions has a substantial impact on sentencing outcomes and average prison terms. Undoubtedly, the decision to file multiple charges is an important component of the strategy prosecutors employ in approaching their felony caseload. Another aspect of that strategy is the extent to which prosecutors attempt to attain convictions on the highest original (indictment) offense as opposed to some lesser offense. The impact of this strategy will be examined next.

#### Conviction on the highest original offense

There are various conditions under which cases examined for this study were designated a conviction on the highest original (indictment) offense. If a person was charged with a robbery, two burglaries, and a larceny but was convicted only of the robbery, the study coded that case as a conviction on the highest original offense. Dropping the lower offenses did not affect the scoring. Similarly, if the person was charged with three armed robberies and was found guilty of only one, that too was scored as a conviction on the highest original offense.

Table 3.5. Percent of sentences to prison and the average prison term imposed, by the number of conviction offenses, 1985

Number of conviction offenses	Percent of sentences to prison terms	Average prison term
One	39%	73 months
Two	57	94
Three	67	120
Four or more	80	150

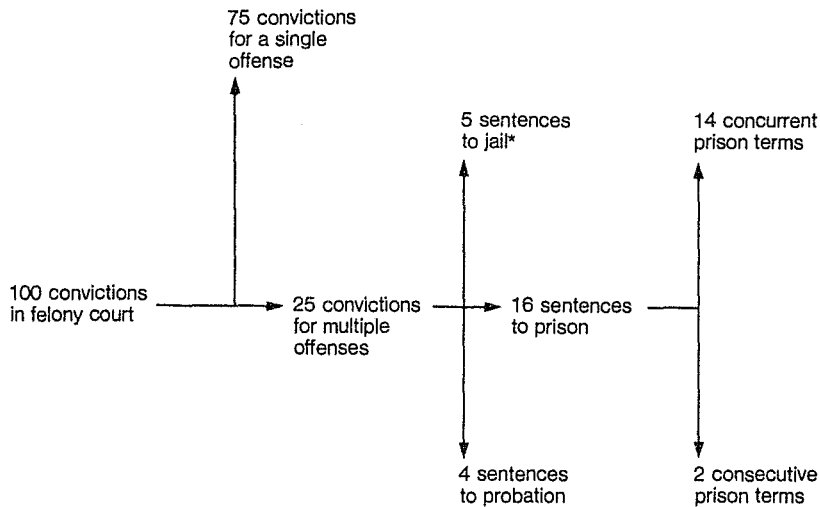
Note: This table is based on those sentences where the number of conviction offenses could be ascertained, which occurred with 93% of the sentences.

Table 3.6. Average prison term imposed for each conviction offense, by the number of conviction offenses, 1985

Conviction offense	Number of conviction offenses			
	One	Two	Three	Four or more
Homicide	175 months	204 months	248 months	290 months
Rape	129	147	194	232
Robbery	91	107	140	167
Aggravated assault	70	91	106	138
Burglary	58	78	77	112
Larceny	44	49	55	66
Drug trafficking	53	58	90	66

Note: This table is based on those sentences where the number of conviction offenses could be ascertained, which occurred in 93% of the sentences. Also, the average prison terms were computed only for those sentences that were less than life imprisonment or the death penalty.

**Multiple convictions in felony court, 1985**



Note: This figure is based on cases where the number of conviction offenses could be ascertained (93% of the cases).

\*Includes three sentences to jail and probation.

Figure 3.1

**Table 3.7. Average prison term imposed for single and multiple conviction offenses and for concurrent and consecutive sentences, 1985**

Type of conviction or sentence	Average prison term
Single offense conviction	73 months
Multiple offense convictions	111
Concurrent sentences	93
Consecutive sentences	189

On the other hand, if the person was originally charged with a robbery and a burglary but was convicted only of the burglary offense, then that case was scored as a conviction on a lower offense. Similarly, if the defendant was originally charged with first degree murder but was found guilty of second degree murder, that too was scored as a conviction on a lower charge.

Conviction on the highest original offense occurs four times more frequently than convictions on a lower offense (table 3.8). A review of the data by offense category reveals a fairly tight range (from 80% to 83%) in the frequency of convictions on the highest original offense for all offense categories except homicide. A much lower percentage of homicide cases (68%) are disposed of on the highest original offense. These offense reductions tend to be associated with the subclassifications of homicide, such as first, second, and third degree murder.

Because the project did not collect information on what the highest original offense was, the relationship between lower offense convictions and highest original offenses cannot be ascertained. However, there were two potential routes that these cases could have taken.

**Table 3.8. Percent of sentences of persons convicted on the highest original offense, by conviction offense, 1985**

Conviction offense	Percent convicted on highest original offense
Overall average	81%
Homicide	68
Rape	83
Robbery	82
Aggravated assault	83
Burglary	83
Larceny	80
Drug trafficking	80

Note: This table is based on those sentences where it could be ascertained whether or not the felon was convicted on the highest original offense. This occurred with 83% of the sentences.

One was for the conviction offense to stay within the same general offense category; for example, an armed robbery disposed of as an unarmed robbery remains within the general offense category of robbery. The other potential route was for the conviction offense to move from one general offense category to another.

For example, a case with two burglaries and one larceny that is disposed of on the larceny offense would move the classification of the conviction offense out of the highest original general offense category (burglary) to a lower offense category (larceny). While lack of information prevents a detailed analysis of lower offense convictions, the data available nonetheless sheds some light on the impact of lower offense convictions on sentencing outcomes.

The overall difference in rates of imprisonment between those convicted on the highest original offense (46%) and those convicted on some lower offense (38%) is substantial (table 3.9). With the exception of drug traffickers, imprisonment rates for persons convicted on a lower offense range between 6 and 16 percentage points lower than the range for persons convicted on the highest indictment offense. With drug trafficking an anomaly exists wherein the imprisonment rate for persons convicted of a lower offense (30%) is higher than that for persons convicted of the highest original offense (27%).

With regard to the average prison term imposed, those found guilty of the highest original offense have a slightly higher average prison term (83 months) than those found guilty of a lower offense (78 months). The difference in prison terms is greatest for homicide (190 months versus 140 months). For burglary the pattern actually reverses, with the average term for those convicted on a lower offense receiving slightly longer average prison terms (68 months) than those found guilty of the highest original offense (63 months).

**Table 3.9 Percent of sentences to prison and the average prison terms imposed for each conviction offense, by whether convicted on the highest original offense, 1985**

Conviction offense	Percent of sentences to prison for felons convicted on:		Average prison term for felons convicted on:	
	Highest offense	Lower offense	Highest offense	Lower offense
Overall average	46%	38%	83 months	78 months
Homicide	87	81	190	140
Rape	66	51	162	146
Robbery	67	51	99	88
Aggravated assault	42	35	85	71
Burglary	51	39	63	68
Larceny	35	22	49	36
Drug trafficking	27	30	56	47

Note: This table is based on those sentences where it could be ascertained whether or not the felon was convicted on the highest original offense, which occurred with 83% of the sentences.

### Summary

This chapter outlined the ways in which sentencing outcomes are affected by legal characteristics of the offense and case processing considerations. The sentencing process follows the general parameters set out in the law; armed robbers, for example, have higher percentages of imprisonment as well as longer terms than unarmed robbers. Similarly, while case characteristics such as multiple-offense convictions and consecutive sentences are rare, their impact on sentencing outcomes in terms of higher prison rates and longer average terms can be substantial.



**Chapter 4**  
**Case processing factors**  
**in sentencing**

This chapter shifts the focus from offense characteristics to factors associated with processing cases through felony court. Three such factors are examined here: the process by which the person was adjudicated guilty; the time elapsed from arrest to sentencing; and whether or not sentencing enhancements were invoked.

**Trials and pleas**

Persons may be found guilty of an offense either through their own admission—a guilty plea—or as the result of a trial. Trials may take place before a jury or, whenever defendants' waive the right to a jury trial, before a judge. Most felony convictions (89%) are attributable to guilty pleas by the defendant (table 4.1). Even among those convicted at trial (11%), only half (6%) are convicted by juries. Conviction by a jury, therefore, is the exceptional circumstance among cases sentenced in felony court.

Jury trial convictions figure more prominently with violent offenses than with nonviolent offenses. This is especially the case with homicide, where the seriousness of the offense and the elusiveness of the facts to be proven generate the need for review by a jury.

For example, with a homicide case, the fact that the defendant killed the victim may not be as much in dispute as whether or not the defendant intended to do so. As discussed in the previous chapter, the type of homicide for which a person can be convicted is tied to the offender's state of mind at the time of the offense. A jury provides a good forum for discerning whether the killing was premeditated (murder), unintended (manslaughter), or the result of a reckless action (negligent homicide).

In addition to convictions for homicide attributable to jury trials (28%), another 9% are the result of either bench trials (6%) or trials where the type could not be ascertained (3%). Rape also shows a relatively large share of convictions attributed to trials—15% of rape

convictions result from jury trials, 5% from bench trials, and 2% from trials the type of which could not be ascertained.

The other two violent offenses under study here—robbery and aggravated assault—have a moderate incidence of trial convictions almost evenly divided between jury and bench trials. There is an even distribution between jury (8%) and bench (8%) trials for persons convicted of aggravated assault and a slightly higher share for jury (7%) versus bench (6%) trials for those convicted of robbery.

With the nonviolent offenses of burglary, larceny, and drug trafficking, very few trials occur. The share of felony convictions attributable to guilty pleas ranges from 93% for burglary to 95% for drug trafficking.

The manner in which a person is adjudicated guilty has substantial impacts on sentencing outcomes (table 4.2). Eighty-two percent of the persons convicted by a jury go to prison, an imprisonment rate that is nearly twice that found for persons who pled guilty (43%). Persons convicted at a bench trial, on the other hand, experience an imprisonment rate (42%) that is similar to that found for persons pleading guilty.

Given the higher share of convictions due to jury trials among violent offenses, the finding of higher imprisonment rates for that type of conviction is expected. An examination of imprisonment rates for each conviction offense by type of conviction demonstrates that the imprisonment rate is higher within each offense category for those persons convicted by a jury as opposed to a guilty plea.

**Table 4.1. Percent of sentences for each type of conviction, by conviction offense, 1985**

Conviction offense	Percent of sentences by type of conviction				
	Jury trial	Bench trial	Trial, but type not known	Guilty plea	Total
Overall average	6%	4%	1%	89%	100%
Homicide	28	6	3	63	100
Rape	15	5	2	78	100
Robbery	7	6	2	85	100
Aggravated assault	8	8	1	83	100
Burglary	3	3	0	93	100
Larceny	2	4	1	94	100
Drug trafficking	3	2	0	95	100

Note: This table is based on those sentences where the type of conviction could be ascertained, which occurred in 96% of the cases. Percentages may not total to 100% because of rounding.

**Table 4.2. Percent of sentences to prison for each conviction offense, by type of conviction, 1985**

Conviction offense	Percent of prison sentences by type of conviction				
	Jury trial	Bench trial	Trial, but type not known	Guilty plea	Total
Overall average	82%	42%	76%	43%	46%
Homicide	93	88	96	79	84
Rape	90	63	83	60	65
Robbery	89	50	82	66	67
Aggravated assault	73	37	50	39	42
Burglary	79	31	81	49	49
Larceny	54	29	50	32	32
Drug trafficking	69	36	68	26	27

Note: This table is based on those sentences where type of conviction could be ascertained, which occurred in 96% of the cases.

The difference is least for homicide, where 93% of those convicted by a jury go to prison compared to 79% of those who pled guilty, and greatest for drug trafficking, where 69% of those convicted by a jury go to prison in contrast to 26% of those who pled guilty.

Not only is the risk of imprisonment higher for persons found guilty at trial, but their average prison terms are also substantially longer (table 4.3). The average prison term for persons convicted by a jury (194 months) is more than 150% longer than that found for persons who pled guilty (73 months). This finding is not an artifact of the higher incidence of jury convictions for violent offenses, since it holds for all conviction offenses. For example, the average prison term for persons convicted of burglary by a jury is 152 months in contrast to the 61 months found for those who pled guilty to that offense.

Life and death sentences were not used in computing average prison sentences for any of the offense categories. An examination of life and death sentences by type of conviction reveals that 43% of persons convicted of homicide at trial received a life or death sentence in contrast to 14% of those who pled guilty (data not shown). Consequently, while the difference in average prison terms is smaller for homicide (272 months for a jury conviction versus 162 months for a guilty plea) than for the other offense categories, there is nonetheless a substantial difference in the prevalence of life or death sentences.

Sentences imposed in felony courts, therefore, differ substantially depending on whether the person pled guilty to the offense or was found guilty by a jury. This study was not designed to explore all of the factors that may account for this finding, but it can shed light on one: the seriousness of the offense. Not only are jury trials more prevalent with violent offenses than with nonviolent offenses, but they are also more likely to occur among the more serious subclassifications within each offense category.

**Table 4.3. Average prison term imposed for each type of conviction, by conviction offense, 1985**

Conviction offense	Average prison term by type of conviction			
	Jury Trial	Bench Trial	Trial, but type not known	Guilty plea
Overall average	194 months	98 months	133 months	73 months
Homicide	272	168	125	162
Rape	247	146	274	132
Robbery	210	113	142	89
Aggravated assault	139	115	100	66
Burglary	152	57	114	61
Larceny	152	42	46	43
Drug trafficking	121	34	96	51

Note: This table is based on those sentences where the type of conviction could be ascertained, which occurred in 96% of the cases.

**Table 4.4. Percent of sentences and imprisonment rates, by the type of conviction and whether convicted on the highest original offense, 1985**

Convicted on	Percent of sentences			
	Convicted by		Imprisonment rate	
	Jury trial	Guilty plea	Jury trial	Guilty plea
Highest offense	91%	79%	85%	44%
Lower offense	9	21	76	37

Note: This table is based on those sentences where the type of conviction and original offense data could be ascertained, which occurred in 79% of the cases.

The incidence of jury trials is consistently higher for the more serious offense subclassifications of homicide, robbery, and burglary. For example, the percentage of convictions attributed to jury trials is 9% for armed robbery in contrast to 6% for unarmed robbery (data not shown). The variation in sentencing outcomes, based on the type of conviction, therefore, is partially attributed to the type of offense for which convicted felons were found guilty.

#### Highest offense convictions

Another aspect of offense seriousness is whether or not the person was convicted on the highest original offense. While offense reduction is usually associated with prosecutorial practices, the practice occurs with juries as well. Juries find persons guilty of a lower offense 9% of the time (table 4.4). Convictions on a lesser offense, however, occur twice as frequently with persons who plead guilty (21%).

Although differing in degree, the general pattern of imprisonment is the same for persons convicted of a lower offense by a jury or by their own admission. Their imprisonment rates are less than those found for persons convicted of the highest offense. The imprisonment rate for persons convicted by a jury on the highest offense is 85% compared to 76% for those convicted of a lower offense. Similarly, persons who plead guilty to the highest offense go to prison 44% of the time compared to 37% of those who plead guilty to a lower offense.

#### Time elapsed from arrest to sentencing

Another difference between cases involving trials, especially jury trials, and those involving guilty pleas is the time it takes to process the case from arrest to sentencing. The time span measured here is from the date of arrest to the date of sentencing.

In some jurisdictions, the sentencing date coincides with the date of conviction, but in many others sentencing occurs some time after the date of conviction. Indeed, sentencing may not occur until a month or more after the date of conviction. Cases involving jury trials consume almost 50% more time (46 weeks) than cases involving guilty pleas (29 weeks) (table 4.5). However, cases involving bench trials take almost the same time (42 weeks) as jury trials.

The percent distribution of cases across the various time categories reinforces the findings regarding the average time elapsed from arrest to sentencing. Nearly 2 out of 3 cases (64%) involving guilty pleas are sentenced within 26 weeks of arrest in contrast to only 1 out of 3 cases (33%) convicted by a jury.<sup>1</sup>

The speed with which a case is processed appears to have little bearing on sentencing outcomes. A comparison of imprisonment rates for the various types of conviction and the elapsed time from arrest to sentencing reveals a slight tendency for imprisonment rates to increase as the time from arrest to sentencing increases (table 4.6). Cases sentenced within 13 weeks have an imprisonment rate of 40%; the imprisonment rate for cases requiring more than 2 years to reach sentencing is 48%.

This pattern, however, appears to be a function of the differential distribution of cases between those who pled guilty and those found guilty at trial. An examination of the imprisonment rates for those pleading guilty shows no major or consistent differences between those cases sentenced within 13 weeks and those requiring 2 years or more to reach

<sup>1</sup>The volume of cases in felony court undoubtedly contributes to the length of time in which cases are heard and, with those resulting in conviction, sentenced. The reason for long delays, however, is not always attributable solely to case backlog. The defendant also plays a role, especially if he or she flees a jurisdiction. Absconding suspends case processing but the clock keeps ticking in its measurement of elapsed time from arrest to sentencing.

the sentencing stage. Similarly, for jury trial convictions, with the exception of the relatively low imprisonment rate for those sentenced within 13 weeks of arrest (69%), there are no major or consistent differences among the remaining categories of time elapsed from arrest to sentencing.

With bench trials, on the other hand, there are some notable differences in imprisonment rates among the various time periods from arrest to sentencing. There is, however, no discernible pattern to those differences. For example, the imprisonment rate for bench trials reaching sentencing within 13 weeks of arrest is 43%. The imprisonment rate falls to 34% for cases requiring 40 to 52 weeks to reach sentencing, and then shoots up to 52% for those cases taking 2 years or more to reach the

sentencing stage. The time elapsed from arrest to sentencing appears to have no consistent effect on whether or not a person is to be sentenced to prison.

#### Time elapsed and conviction offense

To check the neutral effect of elapsed time on sentencing outcomes the data were also examined by conviction offense. That analysis revealed that violent offense convictions took longer to process from arrest to sentencing than did non-violent offense convictions. This was especially the case for homicide, which averaged 53 weeks from arrest to sentencing (data not shown).

Rape convictions required an average of 39 weeks to reach sentencing, with aggravated assault and robbery taking slightly less time (35

Table 4.5. Percent of sentences, by type of conviction and time elapsed from arrest to sentencing, 1985

Time elapsed from arrest to sentencing	Percent of sentences by type of conviction				
	Jury trial	Bench trial	Trial, but type not known	Guilty plea	Total
Total	100%	100%	100%	100%	100%
1-13 weeks	7	17	20	33	31
14-26	26	21	47	31	30
27-39	23	24	17	15	16
40-52	15	13	7	8	9
53-78	15	14	3	7	8
79-104	7	4	1	3	3
105 or more	7	6	5	3	3
Average elapsed time	46 weeks	42 weeks	29 weeks	29 weeks	31 weeks

Note: This table is based on those sentences where the type of conviction and the time elapsed to sentencing could be ascertained, which occurred in 65% of the cases. Percentages may not total to 100% because of rounding.

Table 4.6. Percent of sentences to prison for each type of conviction, by the time elapsed from arrest to sentencing, 1985

Time elapsed from arrest to sentencing	Percent of sentences to prison by type of conviction				
	Jury trial	Bench trial	Trial, but type not known	Guilty plea	Total
Overall average	80%	41%	63%	40%	43%
1-13 weeks	69	43	55	39	40
14-26	84	38	55	42	44
27-39	82	40	74	39	43
40-52	81	34	94	41	44
53-78	77	41	78	41	45
79-104	79	50	33	41	46
105 or more	80	52	79	42	48

Note: This table is based on those sentences where the type of conviction and the time elapsed to sentencing could be ascertained, which occurred in 65% of the cases.

and 33 weeks, respectively). Non-violent offense convictions took less than 30 weeks to reach sentencing, with a range of from 25 weeks for burglary to 29 weeks for larceny and drug trafficking.

Upon examination of the rate at which persons were imprisoned, some notable differences within all of the conviction offenses emerge, but these differences show no discernible pattern (table 4.7). With robbery, for example, the imprisonment rate increases from 60% for those sentenced within 13 weeks of arrest to 67% for those sentenced between 27 and 39 weeks from arrest. The imprisonment rate then drops to 57% and 58% over the next two time groups (40-52 weeks and 53-78 weeks), increases to 61% for those sentenced between 79 and 104 weeks from arrest, and reaches its highest imprisonment rate (68%) for those cases requiring over 2 years to reach the sentencing stage.

Only with drug trafficking does any discernible pattern appear. With these convictions there is a tendency

for the imprisonment rate to increase as the elapsed time to sentencing increases. There is a steady increase from the imprisonment rate of 17% for persons sentenced within 13 weeks to a high of 34% for those sentenced between 79 and 104 weeks from the date of their arrest. The rate then falls to 29% for cases requiring more than 2 years to reach the sentencing stage.

With regard to average prison terms imposed for the various crime categories, again there are substantial differences for different elapsed times within each crime category (table 4.8). These differences, however, fall into no discernible pattern.

With drug trafficking, for example, the average prison term fluctuates substantially across the various time periods required to reach sentencing from date of arrest. Drug trafficking cases reaching sentencing within 13 weeks of arrest receive an average prison term of 36 months. The average prison term rises to 63 months for those sen-

tenced between 27 and 39 weeks, then drops to 38 months for those sentenced between 40 and 52 weeks from the date of arrest. The highest average prison term (73 months) is found for cases requiring more than 2 years to reach the sentencing stage.

There is no consistent relationship between the length of the prison term imposed and the elapsed time from arrest to sentencing. In all instances, however, those cases reaching sentencing within 13 weeks from the date of arrest have lower average prison terms than those requiring more than 2 years to reach the sentencing stage.

#### Sentencing enhancements

A case processing consideration that does affect prison terms is whether or not sentencing enhancements were invoked. All State penal codes include provisions that allow for an increase in penalties under specified circumstances. These provisions, which usually deal with a felon's prior contact with the crimi-

**Table 4.7 Percent of sentences to prison for each conviction offense, by the time elapsed from arrest to sentencing, 1985**

Time elapsed from arrest to sentencing	Percent of sentences to prison for conviction offense of:						
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking
1-13 weeks	76%	57%	60%	36%	50%	30%	17%
14-26	79	61	66	38	48	29	22
27-39	88	69	67	40	35	22	27
40-52	87	64	57	39	46	22	30
53-78	80	67	58	42	49	25	30
79-104	81	74	61	55	46	19	34
105 or more	90	74	68	51	31	24	29

Note: This table is based on those sentences where the time elapsed from arrest to sentencing could be ascertained, which occurred in 65% of the cases.

**Table 4.8. Average prison term imposed for each conviction offense, by the time elapsed from arrest to sentencing, 1985**

Time elapsed from arrest to sentencing	Average prison term for each conviction offense							Overall average
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	
1-13 weeks	164 months	122 months	84 months	61 months	53 months	30 months	36 months	59 months
14-26	186	131	88	68	59	35	38	74
27-39	172	167	109	99	65	50	63	99
40-52	168	159	115	101	68	38	38	96
53-78	200	180	118	97	58	37	50	98
79-104	155	145	133	85	78	39	46	101
105 or more	204	148	127	87	54	41	73	109

Note: This table is based on those cases where the time elapsed from arrest to sentencing could be ascertained, which occurred in 65% of the cases.

nal justice system, may fall under such titles as "habitual offender" or "persistent offender."

State codes vary regarding the number of prior convictions required to qualify for such sentencing enhancements. In some States one prior conviction is enough to initiate the process while in other States three prior convictions may be required.

A number of State codes also include enhancement provisions that address the offender's use of a firearm or the physical injury inflicted on the victim. While most States elect to deal with these aggravating circumstances through the offense statutes themselves, some handle these circumstances through sentencing enhancements.

For example, in California, robbery is defined simply as "the unlawful taking of property from another with force or the threat of force" (Section 211 of the California Penal Code). Circumstances such as the use of a weapon or inflicting bodily injury on the victim are dealt with under sentencing enhancement provisions (Section 12022 of the California Penal Code). These considerations play a major role in the use of enhancements in California.

For the purposes of this study, information was sought only for those instances in which these sentencing enhancements were successfully invoked. The study did not try to identify those instances in which either the defendant was eligible for sentencing enhancements but the enhancements were not invoked or, if sought, the enhancements were not granted.

Only 9 of the 28 jurisdictions participating in this study had data readily available on the frequency with which enhancements were invoked in felony court sentencing. Sentencing enhancements were invoked in 17% of sentences to prison (table 4.9). These enhancements resulted in prison sentences that were more than 50% longer than those not involving such enhancements (95 months versus 61 months).

Among the nine jurisdictions providing the data, substantial variation in the use of sentencing enhancements exists. The rate at which sentencing enhancements are invoked ranges from 5% in Maricopa County to 27% in Hennepin County. The impact of these enhancements on average prison terms also varies substantially. The least amount of impact occurs in Orleans Parish, where the prison term increases by only 8% from 114 months for sentences without enhancements to 123 months for enhanced sentences. In Baltimore County, on the other hand, prison terms are 150% longer for those in which enhancements are invoked (128 months versus 51 months).

There is a tendency for enhancements to be more heavily associated with violent offenses than with non-violent offenses (data not shown). Persons convicted of homicide experience the highest percentage of prison terms involving enhancements (40%), followed closely by those convicted of robbery (36%), and aggravated assault (32%). Persons convicted of drug trafficking show the lowest percentage of prison terms involving enhancements (5%) with those convicted of burglary and larceny showing only slightly higher values (7% and 12%, respectively).

## Summary

The manner in which a person is convicted and whether or not sentencing enhancements are invoked substantially affect sentencing outcomes. Compared with those who plead guilty, persons convicted at trial have higher imprisonment rates and receive longer average prison terms. In addition, sentencing enhancements produce substantially longer terms for persons who receive them.

Even though jury trials and enhancements are more likely to occur with violent offenses, both affect sentences for all of the conviction offenses under study here. On the other hand, the time to process a case from arrest to sentencing has only minor effects on sentencing outcomes.

Table 4.9. Percent of cases in which sentencing enhancements are invoked and the average prison terms imposed, by the presence of enhancements, for selected jurisdictions, 1985

Jurisdiction	Percent in which sentencing enhancements are invoked	Average prison terms when sentencing enhancements are:	
		Invoked	Not invoked
Overall average	17%	95 months	61 months
Baltimore County	19	128	51
Denver	13	171	70
Hennepin County	27	74	55
Jefferson County	22	130	99
Los Angeles County	19	88	46
Maricopa County	5	89	64
Orleans Parish	24	123	114
Philadelphia	11	136	108
San Diego County	13	64	54

Note: This table is based on those sentences for which information on whether or not a sentencing enhancement was invoked was ascertained, which occurred in 99% of the prison sentences for the jurisdictions displayed in this table.

## Chapter 5 Offender characteristics

This chapter focuses on two demographic characteristics of the offender: age and sex. These characteristics are examined to obtain a picture of those who make up the felony court workload and to determine the extent to which sentencing outcomes vary for different demographic subgroups.

### Age and sex

The incidence of interaction between young males and the criminal justice system is very high. Statistical data on victimization have consistently revealed much higher victimization rates for young males

than for any other age and sex group. Arrest data also reveal a much larger presence of young males than any other population segment.

This study underscores that trend, finding that 91% of those sentenced in felony court are male (data not shown) and that more than 7 out of 10 (71%) convicted felons are 30 years of age or younger (table 5.1).

The average age for convicted felons is 28 years. The low percentage of persons under 21 years of age (18%) is due mainly to the fact that juveniles are handled in juvenile court, with the definition of juvenile

ranging from 16 years of age in States such as New York to under 18 in States such as California. Persons aged 21-30 compose the majority of offenders (53%) in felony court. The percentage share drops quickly to 21% for those aged 31-40, 6% for persons in the 41-50 age group, and 2% for those over 50 years of age.

The female population in felony court is slightly older than their male counterparts (30 years versus 28 years of age). The distribution of persons in the age categories "under 21" and "31-40" is the reason for the older average age for females. Nearly 1 out of 5 males (19%) were

Table 5.1. Average age of offenders and percent of offenders in each age group, by sex, 1985

Sex of offender	Average age	Percent of offenders by age					
		Total	Under 21 years	21-30 years	31-40 years	41-50 years	Over 50 years
Both	28 years	100%	18%	53%	21%	6%	2%
Female	30	100	10	54	27	6	3
Male	28	100	19	53	20	6	2

Note: This table is based on those sentences where the age and sex of the offender could be ascertained, which occurred in 74% of the cases.

Table 5.2. Percent of sentences for each conviction offense, by sex of offender, 1985

Sex of offender	Percent of sentences with conviction offense of:							Total
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	
Female	4%	—	7%	9%	13%	39%	28%	100%
Male	3	5	17	8	27	16	22	100

Note: This table is based on those sentences where the sex of the offender could be ascertained, which occurred in 93% of the cases. Percentages may not total to 100% because of rounding. —Less than 0.5%.

Table 5.3. Percent of sentences for each type of sentence imposed, by sex of offender, 1985

Sex of offender	Percent of sentences to:					Total
	Prison	Jail only	Jail and probation	Probation only	Other	
Female	28%	5%	22%	44%	1%	100%
Male	47	6	23	24	1	100

Note: This table is based on those sentences where the sex of the offender could be ascertained, which occurred in 93% of the cases. Percentages may not total to 100% because of rounding.

Table 5.4. Percent of sentences to prison for each conviction offense, by sex of offender, 1985

Sex of offender	Percent of sentences to prison with conviction offense of:						
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking
Female	66%	48%	49%	25%	36%	25%	18%
Male	85	66	67	44	49	34	28

Note: This table is based on those sentences where the sex of the offender could be ascertained, which occurred in 93% of the cases.

under 21 at the time of sentencing compared to 1 out of 10 females (10%) in that age category. This difference is offset by a higher share of females (27%) than males (20%) in the 31-40 year old age category.

Males and females also differ in the offenses for which they are convicted. Males are much more likely to be convicted of robbery and burglary (table 5.2). Indeed, the percentage shares for males convicted of robbery and burglary are more than twice those found for females. Seventeen percent of the males are convicted of robbery as opposed to only 7% of the females; for burglary the percentages are 27% and 13%, respectively. On the other hand, a much higher percentage of females (39%) than males (16%) are convicted of larceny.

Because the imprisonment rate is substantially lower for larceny than for robbery and burglary, this differential distribution in conviction offenses between male and female offenders partially explains the finding that females have a much lower imprisonment rate than males (table 5.3). Twenty-eight percent of convicted females are sent to prison in contrast to nearly half of the convicted males (47%).

The risk of jail is nearly equal for male and female offenders. There is only a slight difference in "jail only" sentences (5% for females and 6% for males) and both sexes receive "jail and probation" sentences at nearly the same rate (22% for females and 23% for males). The difference in the imposition of prison is

**Table 5.5. Average prison term imposed, by sex of offender and conviction offense, 1985**

Conviction offense	Sex of offender	
	Female	Male
Overall average	59 months	87 months
Homicide	138	194
Rape	117	159
Robbery	100	106
Aggravated assault	49	83
Burglary	46	66
Larceny	36	48
Drug trafficking	51	57

Note: This table is based on those cases where the sex of the offender could be ascertained, which occurred in 76% of the cases.

offset with sentences involving "probation only." Females are sentenced to "probation only" 44% of the time in contrast to the 24% rate found for males.

Even though the large difference in imprisonment rates between males and females is attributable partially to the differential distribution of the offenses for which they are convicted, males nonetheless experience higher imprisonment rates in each of the seven offenses under study here (table 5.4).

The magnitude of the difference however, does vary by conviction offense. The difference is least for homicide, an offense for which males are only 29% more likely to be imprisoned than females (85% of males and 66% of females). With drug trafficking, on the other hand, the difference in imprisonment rates between males and females is

greatest. Males are 56% more likely to be imprisoned for a drug trafficking conviction than females (28% of males and 18% of females).

In addition to experiencing higher imprisonment rates, males are also sentenced to longer prison terms. The average prison term for males (87 months) is almost 50% longer than that for females (59 months, table 5.5). The disparity between males and females varies with the offense. The greatest difference is found for aggravated assault where prison terms for females (49 months) are 59% that of males (83 months). The smallest difference is found for robbery, where prison terms for females (100 months) are 94% that of males (106 months).

#### Age

There are also differences among age groupings with regard to the distribution of offenses for which persons are convicted. The average age associated with each conviction offense provides a convenient synopsis of differences that exist in the distribution of offenders across age categories (table 5.6).

**Table 5.6. Percent of offenders for each age group and average age of offenders, by conviction offense, 1985**

Conviction offense	Average age	Age of the offender					Total
		Under 21 years	21-30 years	31-40 years	41-50 years	51 years or older	
Homicide	30 years	14%	48%	24%	9%	6%	100%
Rape	33	11	43	27	12	7	100
Robbery	26	26	56	15	3	1	100
Aggravated assault	30	14	51	22	10	3	100
Burglary	27	24	55	18	3	1	100
Larceny	30	15	51	26	6	3	100
Drug trafficking	30	13	54	23	8	3	100

Note: This table is based on those sentences where the age of those offenders sentenced to prison could be ascertained, which occurred in 72% of the cases. Percentages may not total to 100% because of rounding.

Robbery and burglary show the youngest average ages (26 years and 27 years, respectively). These young average ages are attributable largely to the sizable percentages of offenders under 21 years of age (26% for robbery and 24% for burglary) and between 21 and 30 years of age (56% for robbery and 55% for burglary). Few offenders in the older age groups are convicted of robbery or burglary. Three percent of the persons convicted of robbery or burglary fall into the 41-50 age group, and only 1% are over 50 years of age.

Among the offenses studied, rape is associated with the highest average age (33 years). Only 11% of the offenders convicted of rape are under 21 years of age. Among the seven offense categories, that is the lowest percentage share of offenders under age 21. Conversely, rape shows the highest percentage of offenders in the older age groups: 12% of those convicted of rape are 41-50 years of age and 7% are over 50 years of age.

The sentences imposed on the different age groups show no major differences. Overall, the imprisonment rate increases from 36% for offenders under 21 years of age to 46% for those aged 31-40 years before falling to 40% for those over 50 years of age (table 5.7). This pattern holds for persons convicted of burglary and larceny as well. Each of the other conviction offenses shows quite different patterns.

With the violent offenses of homicide, rape, and aggravated assault, there is a tendency for imprisonment rates to fall as the age of the offender increases. With aggravated assault, for example, the imprisonment rate is highest for those under 21 years of age (45%), with the rate falling off to 28% for those over 50 years of age.

Robbery and drug trafficking, on the other hand, show an opposite pattern: Imprisonment rates increase as the age of the offender increases. This is especially the case with robbery, where the rate of imprisonment is lowest for those of-

**Table 5.7. Percent of sentences to prison for each offender age group, by conviction offense, 1985**

Conviction offense	Age of the offender				
	Under 21 years	21-30 years	31-40 years	41-50 years	Over 50 years
Overall average	36%	44%	46%	43%	40%
Homicide	85	85	79	78	79
Rape	73	69	57	55	52
Robbery	53	65	71	80	85
Aggravated assault	45	40	43	35	28
Burglary	35	48	56	45	40
Larceny	18	30	32	26	25
Drug trafficking	12	22	27	36	30

Note: This table is based on those sentences where the age of those offenders sentenced to prison could be ascertained, which occurred in 72% of the cases.

fenders under 21 (53%), then increases consistently over each of the remaining age categories until the highest imprisonment rate is reached for offenders over 50 years of age (85%). With drug trafficking the imprisonment rate rises consistently from 12% for offenders under 21 to 36% for those who are 41-50 years of age, then drops to 30% for offenders over 50 years of age.

In looking at average prison terms and the age of the offender, a stronger relationship emerges for conviction offenses in the aggregate than for individual offense categories (table 5.8). Overall, there is a consistent increase in the average prison term as the age of the offender increases. The average prison term increases from 75 months for offenders under 21 years of age to 94 months for those over 50.

This overall pattern generally holds for persons convicted of robbery, burglary, or drug trafficking. However, none of these offense cat-

egories shows the consistency found with offenses in the aggregate. With burglary, for example, the average prison term is lowest for offenders over 50 years of age (37 months). With robbery and drug trafficking, on the other hand, offenders aged 41-50 have shorter average terms than the 31-40 year olds, but still longer terms than the 21-30 year olds. With both offenses, those over 50 years of age have the longest average terms --140 months for robbery and 60 months for drug trafficking.

With larceny, on the other hand, the average prison term levels off for offenders aged 31-50 (42 months) before dropping for those over 50 years of age (40 months). Neither rape nor aggravated assault displays a consistent relationship between the offender's age and average prison term imposed.

With homicide there is a tendency for the average prison term to decrease as the age of the offender increases. The longest average pris-

**Table 5.8. Average prison term for each offender age group, by conviction offense, 1985**

Conviction offense	Age of the offender				
	Under 21 years	21-30 years	31-40 years	41-50 years	Over 50 years
Overall average	75 months	76 months	83 months	89 months	94 months
Homicide	197	178	169	147	155
Rape	158	141	142	116	133
Robbery	82	94	127	115	140
Aggravated assault	75	81	75	88	61
Burglary	53	58	59	103	37
Larceny	32	36	42	42	40
Drug trafficking	34	41	54	52	60

Note: This table is based on those cases where the age of the offender could be ascertained, which occurred in 72% of the cases.



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on term for homicide occurs with offenders under 21 years of age (197 months), while those 41-50 years of age receive the shortest terms (147 months). This is due partly to the fact that younger offenders are more frequently convicted of murder rather than manslaughter or negligent homicide than is the case with older offenders. For example, within the general offense category of homicide, 67% of those persons under 21 years of age were convicted of murder in contrast to 60% of those over 50 years of age (data not shown).

### Summary

Young males (under 30 years of age) constitute the lion's share of offenders in felony court. Changes in a jurisdiction's demographic composition as well as changes in criminal activity among various population segments have major consequences for felony court.

For example, if women seize upon equal opportunity in criminal careers, a major increase in felony caseload can easily occur. Also, if the pattern of offenders giving up their lives of crime as they reach their forties fails to continue, then the post-World War II baby boomers could continue to pose a major workload problem for felony court sentencing and for corrections.

With regard to sentencing outcomes, some significant differences were found between males and females. The magnitude of the difference uncovered in the aggregate was diminished when controlled for conviction offense. Nevertheless, males experience higher imprisonment rates and longer prison terms than females. While differences in sentencing outcomes were also observed among the various offender age groupings, there were no patterns as strong as those found with sex. The relationship of imprisonment and average prison term with the age of the offender varied among the conviction offenses.

## Chapter 6 Conclusion

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The principal purpose of this report was to answer three questions about cases sentenced in felony court:

- To what extent are convicted felons incarcerated?
- Where are they incarcerated?
- For how long are they incarcerated?

The answers to these questions are not simple. What occurs in felony court is very much affected by the sentencing structure established by the State legislature. Jurisdictions operating under a determinate sentencing structure had sentencing outcomes quite different from those with indeterminate sentencing structures. Jail plays a prominent role in felony sentencing among determinate sentencing jurisdictions. In addition, length of prison terms also differs substantially, with determinate sentencing jurisdictions averaging prison terms that are half those of indeterminate sentencing jurisdictions.

The prison term imposed on the convicted felon is affected not only by the type of sentencing structure under which the court is operating but also by the amount of discretion afforded the parole board and legislative provisions affecting good time and earned time. Some of these legislative provisions are quite complex.

There is little uniformity among States with respect to sentencing systems and, not surprisingly, this leads to substantial variations in sentencing outcomes, especially in prison terms imposed. For this reason it is important to understand what a prison term means before comparing jurisdictions in different States. Knowledge of the minimum term and legislative provisions on good time and earned time provides a much needed context.

Sentencing outcomes in felony court are also affected by the offense for which the person is sentenced. Violent offense convictions (homicide, rape, robbery, and aggravated assault) have sentencing outcomes different from nonviolent conviction offenses (burglary, larceny, and drug trafficking). Violent offenses are associated with higher

imprisonment rates and longer average prison terms than are nonviolent offenses. This finding also reflects the fact that State penal codes generally employ felony classes to differentiate the relative seriousness with which the legislature views different offenses. Violent offenses generally have higher felony classifications than nonviolent offenses.

This differentiation applies not only to general offense categories but to subclassifications within those general categories as well. Many legislatures treat armed robbery more seriously than unarmed robbery, for example. Where such distinctions are made with regard to homicide (murder, manslaughter, negligent homicide), robbery (armed, unarmed), and burglary (residential, nonresidential), sentencing outcomes reflect patterns that are commensurate with legislative priorities.

The offender's criminal history also affects sentencing outcomes. Prior convictions can lengthen the prison term imposed, as demonstrated with persons receiving sentencing enhancements.

While judges impose sentences in felony court, they do so in the context of the factors outlined above. This study provides information on the context in which sentencing takes place. There are differences among jurisdictions, but discussions of sentence disparity cannot ignore the context of those differences.

## Appendix A Methodological notes

With the exception of Harris County, Jefferson County, and Orleans Parish, the data in this report represent all of those sentences meted out for the crimes under study during calendar year 1985.

Harris County provided sentencing data for the period January 1, 1985 through November 30, 1985. The reason for this time frame was that Harris County had their data readily available to provide the project and was not sure when it could provide the project with the entire calendar year. Every 11th case had its case weight doubled in order to obtain a single-year estimate.

The record systems in Orleans Parish forced a change in the reference period there. The change entailed going from sentences handed down in 1985 to cases initiated in 1985. The reason for this change in reference period was that no central record system existed in which to examine cases by their date of disposition. Court records are organized by the date on which cases are initiated. Because of the large number of raw records that would have to be examined (there are 10 courts with each court having 12-14 volumes of 250-300 cases each) and because cases tend to be disposed of within 60-90 days, the decision was made to go with cases initiated in 1985 knowing that nearly all would have been disposed of by the time the data were coded (which was in June 1986).

### Geographical coverage

The penal codes from each of the participating jurisdictions provided the basis for defining the seven crimes analyzed in this study -- homicide, rape, robbery, aggravated assault, burglary, larceny, and drug trafficking. Staff specified which penal code citations applied to these various crime types and in some instances specified what citations did not. These exclusions took place where the participating jurisdiction's penal code could lead to potential confusion with the general parameters that were laid down for the

study. For example, a number of States have statutes dealing with criminal trespass, a crime that could easily be confused with burglary. Staff made explicit that criminal trespass should be excluded from the data collection effort.

Staff compiled a listing of all statutes falling into the study in a separate report titled, "State Penal Code Citations." A review of this document would show that there are differences as to how the crimes are defined from jurisdiction to jurisdiction. Such differences are to be expected with each State legislating its own code. In the context of the seven crimes involved in this study, the differences do not seriously impair our ability to obtain comparable definitions.

The general parameters for the selected crime categories and the major differences observed among the jurisdictions are outlined below:

**Homicide.** This crime was defined as wrongful death with or without intent and included such legal terms as murder, manslaughter, reckless homicide, and vehicular homicide. The types of crimes excluded from this crime category for the purposes of this study involved such activities as aiding in a suicide and causing the death of an unborn child. Because the study was looking at cases disposed of as felonies, there were several instances where certain types of homicides did not qualify for inclusion in the study because they were defined as misdemeanors in the penal codes. For example, vehicular homicide is a misdemeanor in Maryland. Because of its misdemeanor status, this crime fell out of the scope of the study. Yet vehicular homicide is a felony in most of the other participating jurisdictions and was within the scope of the study for them. Finally, whenever a person was convicted of an attempted homicide, the study reclassified the offense to an aggravated assault.

**Rape.** This crime was defined as the illegal sexual penetration of a person, including the use of foreign objects. Consequently, this defini-

tion embraces statutory rape (where force may be absent but the status of the victim is viewed as *prima facie* evidence that the victim was not capable of resistance, for example, age or mental competency) as well as forcible rape. This crime category includes homosexual rape as well as heterosexual rape. Statutory provisions that the study excluded involved crimes of sexual contact (including those with elements of force and those committed against children) where no sexual penetration was achieved. For purposes of this study, persons found guilty of attempted rape remained in the rape category.

**Robbery.** This crime was defined as the use of force to deprive another of his/her property. While the definition for robbery is very straightforward, there are some items that need to be highlighted here. Several penal codes have provisions under burglary that involve a basic element for robbery, that is, a confrontation between the offender and the victim. In many instances this is tied in with other circumstances such as the offender carrying a weapon. Because the project could not always be certain that a confrontation did indeed occur, armed robbery covers a wide spectrum of weapons that goes beyond the image of a felon pointing a gun at the victim. Weapon usage can embrace knives, bats, play guns, or even someone pointing a finger through his/her pocket to give the appearance of a weapon.

**Aggravated assault.** This crime was defined as the infliction of injury or the threat to inflict injury on another. As noted above, attempted homicide is included under this crime category. Penal codes tend to differentiate between felony and misdemeanor assault based on the extent of injury and the nature of the threat. Felony assault is usually defined as aggravated assault and/or battery and involves serious physical injury and/or weapon usage. A number of statutes elevate simple (misdemeanor) assaults against police officers, firefighters,

and other public officials to felony status. These are included in the study. On the other hand, some States treat the threat to use a weapon as a misdemeanor, so those offenses are not included in the study.

**Larceny.** This crime is perhaps the most ambiguous of the crime categories included in the study. The study sought to limit the definition to the unlawful taking of property and to exclude such circumstances as extortion, fraud, or deception. Some codes have separate citations for such circumstances while many of the codes strictly focus on the value of the property taken, without regard to the method used by the offender. In addition, the value threshold for felony theft varies from \$20 in Oklahoma to \$1,000 in Pennsylvania. It should also be noted that theft here includes motor vehicle theft. Finally, a number of codes define certain types of theft to be a felony without regard to the value taken, for example, theft from the person (pocket-picking).

**Drug trafficking.** This crime was defined to include the transportation, manufacture (including growing), distribution, and selling of controlled substances as well as those legislative provisions that specified possession with intent to transport, manufacture, distribute, or sell. Straight possession, however, was not included in this crime category. It should be noted that codes vary on the threshold weight in distinguishing between straight possession and possession with intent to sell.

The review of the various penal codes revealed a degree of consistency in differentiating by penal code citation various circumstances of a crime (armed versus unarmed robbery, for example), which is useful information in analyzing sentencing data. The project sought to recover such information and utilized the following scheme in classifying the various types of crime:

#### General classification of crimes

Code number	Crime category
100	Homicides (undifferentiated)
110	Murder
130	Manslaughter
140	Reckless (including vehicular)
200	Rape (undifferentiated)
210	Forcible rape
220	Statutory
300	Robbery (undifferentiated)
310	Armed robbery
320	Unarmed robbery
400	Assault
430	Attempted homicide
500	Burglary (undifferentiated)
510	Residential
520	Other structure
530	Burglary involving contact with victim or a weapon
600	Theft
700	Drug trafficking (undifferentiated)
710	Narcotics, cocaine, Schedules I & II
720	All other except cannabis
730	Cannabis

## Appendix B Sampling

To ease the data entry task as well as to facilitate verification of the data whenever questions arose, the project employed sampling. The rate at which cases were sampled varied by jurisdiction and conviction offense. Because the project had information on all cases within each conviction offense, the sampling procedure was straightforward. If the sample was to be 33% for a particular offense, every third case in that offense listing was selected. The case selected was then weighted by the inverse of its sampling ratio.

It is important to note that cases retained this initial weight even if the conviction offense changed. After drawing the sample of cases, the project then consulted another listing that contained all persons convicted in calendar year 1985 along with all of their conviction offenses. If the project picked a person up on a burglary, for example, but the person was also convicted of a robbery, the case would be coded

as a robbery but would continue to bear the case weight of the burglary. Such changes were rare but it is these types of changes that produce the fractions in table B.1.

This appendix contains two tables. The first is the listing of the average weights for each offense within each jurisdiction. As shown in table B.1 the weights are low for homicide and rape but higher for the nonviolent offenses of burglary, larceny, and drug trafficking. The second table provides the unweighted case count for each conviction offense within each jurisdiction.

Table B.1. Average weight for each conviction offense, by jurisdiction, 1985

Jurisdiction	Conviction offense							Jurisdiction average weight
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	
Overall average weight	1.4	1.5	3.2	2.3	3.5	3.4	4.2	3.0
Baltimore City	1.0	1.0	3.9	1.0	4.0	2.0	8.3	2.8
Baltimore County	1.0	1.0	1.0	1.1	1.0	3.0	1.0	1.5
Dade County	2.0	1.0	4.0	2.1	5.9	6.0	2.0	3.5
Dallas County	2.0	2.0	4.0	3.0	10.0	10.0	4.0	5.0
Davidson County	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Denver	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Erie County	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Essex County	1.0	1.0	2.0	2.0	1.0	1.0	3.0	1.6
Franklin County	1.0	1.0	1.0	1.0	1.0	2.7	1.0	1.3
Harris County	1.2	2.4	6.6	4.7	8.9	8.8	9.6	6.5
Hennepin County	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Jefferson County	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Jefferson Parish	1.0	1.1	1.1	1.1	1.1	2.1	2.1	1.5
Kane County	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
King County	1.0	1.0	1.1	2.0	2.8	4.0	2.0	2.3
Los Angeles County	2.1	2.1	6.7	3.8	8.0	6.0	12.0	6.3
Lucas County	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Manhattan	2.0	1.0	7.7	2.2	4.9	5.2	8.0	5.5
Maricopa County	1.0	1.0	1.0	2.8	5.0	5.2	4.8	3.2
Mecklenburg County	1.0	1.0	2.0	1.0	2.9	2.0	2.0	2.0
Milwaukee County	1.0	2.0	2.0	1.0	3.0	2.0	3.0	2.3
Multnomah County	1.0	1.0	1.0	1.0	1.0	2.0	1.0	1.1
Oklahoma County	1.0	1.0	1.0	1.0	3.0	1.9	3.0	1.9
Orleans Parish	1.1	1.2	1.1	1.1	2.0	2.9	2.0	1.7
Philadelphia	1.0	1.0	10.0	7.0	6.0	4.0	2.0	4.3
San Diego County	1.0	2.0	2.0	4.6	9.0	7.0	2.1	3.6
St. Louis	1.0	1.0	1.0	1.0	2.0	2.0	1.0	1.5
Suffolk County	1.0	1.0	2.0	1.0	3.0	2.0	2.0	1.9

Jurisdiction	Conviction offense							Total cases
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	
Total cases	1,881	2,103	3,866	2,655	5,181	3,766	3,937	23,389
Baltimore City	115	66	155	123	149	88	42	738
Baltimore County	11	8	102	31	171	152	110	585
Dade County	81	65	157	161	185	141	258	1,048
Dallas County	91	127	141	87	121	84	82	733
Davidson County	59	46	101	64	218	203	97	788
Denver	39	22	100	98	258	44	185	746
Erie County	25	11	58	42	185	31	80	432
Essex County	63	50	142	114	243	179	187	978
Franklin County	39	43	181	62	185	124	236	870
Harris County	196	172	161	106	266	242	251	1,394
Hennepin County	18	106	103	98	227	154	55	761
Jefferson County	31	24	114	46	154	137	178	684
Jefferson Parish	26	16	88	29	197	151	72	579
Kane County	11	16	29	37	103	121	55	372
King County	52	108	62	91	204	123	85	725
Los Angeles County	335	423	476	451	558	324	557	3,124
Lucas County	20	19	58	49	62	195	136	539
Manhattan	93	42	223	96	152	135	172	913
Maricopa County	100	147	215	159	197	217	158	1,193
Mecklenburg County	29	7	29	43	88	34	39	269
Milwaukee County	71	100	140	18	153	98	131	711
Multnomah County	33	83	226	102	266	119	89	918
Oklahoma County	35	43	122	101	134	106	123	664
Orleans Parish	43	35	186	107	174	128	109	782
Philadelphia	128	175	145	73	144	112	94	871
San Diego County	82	44	123	69	72	51	121	562
St. Louis	22	46	113	77	172	138	67	635
Suffolk County	33	59	116	121	143	135	168	775

**Appendix C**  
**Case count**

**Table C.1. Weighted distribution of sentences for each conviction offense, by jurisdiction, 1985**

Jurisdiction	Conviction offense							Total cases
	Homicide	Rape	Robbery	Aggravated assault	Burglary	Larceny	Drug trafficking	
Total cases	2,561	3,126	12,232	5,995	18,046	12,849	16,422	71,231
Baltimore City	115	66	610	128	597	176	348	2,040
Baltimore County	11	8	102	35	173	452	110	891
Dade County	162	67	621	336	1,098	843	525	3,652
Dallas County	184	259	568	261	1,210	840	328	3,650
Davidson County	59	46	101	64	218	203	97	788
Denver	39	22	100	98	258	44	185	746
Erie County	25	11	58	42	185	31	80	432
Essex County	63	50	284	224	243	181	561	1,606
Franklin County	39	43	181	62	191	340	236	1,092
Harris County	234	420	1,062	497	2,361	2,128	2,398	9,100
Hennepin County	18	106	103	98	227	154	55	761
Jefferson County	31	24	114	46	154	137	178	684
Jefferson Parish	27	17	94	31	211	322	150	852
Kane County	11	16	29	37	103	121	55	372
King County	52	111	68	183	563	492	172	1,641
Los Angeles County	704	906	3,205	1,732	4,438	1,944	6,684	19,613
Lucas County	20	19	58	49	62	195	136	539
Manhattan	186	42	1,722	207	752	696	1,376	4,981
Maricopa County	100	147	215	451	985	1,123	758	3,779
Mecklenburg County	29	7	58	45	259	68	78	544
Milwaukee County	71	202	285	18	458	196	393	1,623
Multnomah County	33	83	226	102	266	238	89	1,037
Oklahoma County	35	43	122	103	400	204	369	1,276
Orleans Parish	48	43	201	117	348	368	217	1,342
Philadelphia	128	175	1,450	511	865	448	188	3,765
San Diego County	82	88	250	320	649	359	253	2,001
St. Louis	22	46	113	77	344	276	67	945
Suffolk County	33	59	232	121	428	270	336	1,479

## Appendix D Good-time provisions

The information in figure 2.2 on the percent of the maximum time to be served and earned-time credits has been simplified and thus does not cover every imaginable contingency addressed by the legislative provisions operating within a given State.

Sentencing enhancements dealing with weapon usage, for example, can lengthen the minimum term to be served if it is successfully pursued. Provisions for mandatory minimum time vary on the person's criminal history as well. Fortunately, weapon usage is not an element usually associated with burglary. On the other hand, however, the data collected for this study do not address criminal history.

Consequently, figure 2.2 does not reflect the impact of criminal histories in altering the various factors displayed in the chart (minimum, good time, etc.). Nevertheless the data in figure 2.2 provide a basic overview for understanding prison terms.

To provide the reader with how the data were interpreted in figure 2.2 in light of the various State codes, the following highlights are presented:

**Arizona.** The minimum to be served as well as the rate at which good-time credits can be awarded are affected by the classification into which an offender is placed. The provisions are as follows:

<u>Class</u>	<u>Minimum</u>	<u>Good time</u>
Class 1	50%	33%
Class 2 (repeat offender)	67%	25%

The data in figure 2.2 are based on a Class 1 designation. The study did not have the data to determine into which classification a person should fall.

**Louisiana.** For first offenders the minimum term to be served is 33%, for second offenders the minimum is 50%, and for third offenders the entire term must be served. Good time is awarded at the rate of 1 day for every 2 days served. Good time is not available to persons adjudicated as habitual offenders. The information in figure 2.2 reflects the following assumptions:

- All of those sentenced are first time offenders.
- None were adjudicated as habitual offenders.

**Maryland.** Legislation permits the parole board to release inmates, whom it determines not to be a danger to the community, even before the one-fifth minimum term is reached.

**Missouri.** The conditional release program calls for the mandatory release of inmates who are sentenced to up to 9 years (C & D class felonies) after they have completed two-thirds of their terms. For those sentenced to more than 9 but less than 15 years, mandatory release takes place 3 years before their maximum terms end. The class of felony on which a person is sentenced also affects the rate at which good time may be awarded as well as the minimum that must be served. The breakdown is as follows:

<u>Class</u>	<u>Minimum</u>	<u>Good time</u>
Class A & B felonies	23%	8%
Class C & D felonies	25%	17%

Burglaries committed without firearms or explosives are Class C felonies. These constitute the vast majority of burglaries. Thus the rates pertinent to Class C felonies were used in putting together the data on the City of St. Louis in figure 2.2.

**New Jersey.** The judge may set a minimum, then the Parole Board has total discretion in considering a parole eligibility date.

**New York.** The minimum term in New York State is up to one-third of the maximum for first felony offenders but up to one-half for persons convicted for the second time or more on a felony charge.

**North Carolina.** The Parole Board has the power to release first time offenders, who are determined to be nonviolent, after serving 25% of their sentence. Burglary is a nonviolent offense so it is conceivable for a number of convicted burglars to be released earlier than the minimum term shown in figure 2.2. North Carolina also has an Emergency Powers Act that enables the Parole Board to accelerate release dates by up to 180 days whenever the Secretary of Corrections declares an emergency condition. Earned time in North Carolina can be issued as follows:

- Gain Time I = 4 hours of work a day generates 2 days earned time per month.
- Gain Time II = 6 hours of work a day generates 4 days earned time per month.
- Gain Time III = 8 hours of work a day generates 6 days earned time per month.

The gain time can be further enhanced if the work is of an emergency nature at a rate of 1 day of earned time for each emergency day worked.

**Oregon.** Legislatively, the Parole Board has wide discretion such that there is no legislated minimum term to be served before being eligible for parole consideration. However, there is additional legislation that creates an Advisory Commission on Prison Terms and Parole Standards. This commission develops rules and establishes ranges for the presumed duration of imprisonment. These ranges vary based on the offense committed and the prison's criminal



**Table D.1. The rate at which good time may be gained, by State, 1985**

State	First year	Second year	Third year	Fourth year	Fifth year	Sixth year	Seventh year	Eighth year	Ninth year	Tenth year	Eleventh year	Earned-time rate
Arizona												
Class 1	33%	33%	33%	33%	33%	33%	33%	33%	33%	33%	33%	%
Class 2	25	25	25	25	25	25	25	25	25	25	25	
California	33	33	33	33	33	33	33	33	33	33	33	17
Colorado	50	50	50	50	50	50	50	50	50	50	50	8
Florida	33	33	33	33	33	33	33	33	33	33	33	33
Illinois	50	50	50	50	50	50	50	50	50	50	50	
Kentucky	33	33	33	33	33	33	33	33	33	33	33	17
Louisiana	33	33	33	33	33	33	33	33	33	33	33	
Maryland	14	14	14	14	14	14	14	14	14	14	14	33
Minnesota	33	33	33	33	33	33	33	33	33	33	33	
Missouri												
Class A&B	8	8	8	8	8	8	8	8	8	8	8	
Class C&D	17	17	17	17	17	17	17	17	17	17	17	
New Jersey	17	17	17	17	17	17	17	17	17	17	17	
New York	33	33	33	33	33	33	33	33	33	33	33	
North Carolina	50	50	50	50	50	50	50	50	50	50	50	
Ohio	17	20	27	30	33	33	33	33	33	33	33	
Oklahoma	0	0	0	0	0	0	0	0	0	0	0	50
Oregon	33	33	33	33	33	33	33	33	33	33	33	13
Pennsylvania	0	0	0	0	0	0	0	0	0	0	0	
Tennessee*	25	42	42	42	42	42	42	42	42	42	50	
Texas												
Trustee	50	50	50	50	50	50	50	50	50	50	50	
Class I	40	40	40	40	40	40	40	40	40	40	40	
Class II	25	25	25	25	25	25	25	25	25	25	25	
Class III	0	0	0	0	0	0	0	0	0	0	0	
Washington	33	33	33	33	33	33	33	33	33	33	33	
Wisconsin	8	17	25	33	42	50	50	50	50	50	50	

Note: Good time reduces the maximum prison sentence to be served. A good-time rate of 33%, for example, reduces the sentence by 1 day for every 2 days served on good behavior.

\*No good time for Class X or repeat offenders. Source: Primarily Caroline Cooper, et. al., *Judicial and Executive Discretion in the Sentencing Process: Analysis of State Felony*

Code Provisions, Washington, D.C. (1982); and NACJP review of various State provisions where changes have occurred since 1982.

history. The Parole Board has to adopt the rules and ranges formulated by this commission. The good-time rate shown is the legislatively prescribed base. Additional good time may be earned at the rates shown below for each of the following circumstances:

Meritorious prison maintenance work (either on the farm or in prison industries) or education:

Rate at which extra good time can be earned	Prison term
1 for 15 days	Less than 1 year
1 for 7 days	1 year to 5 years
1 for 6 days	More than 5 years

Tennessee. No good time for Class X or repeat offenders.

\*U.S. G.P.O. 1987-181-478:60017

Another factor that affects the likely duration of a person's stay in prison is the awarding of good time. Practices vary by State and indeed in some States the rate at which good time can be earned varies by the length of the sentence imposed. Table D.1 presents the various facets of good time within the States encompassed by this study.

Sentences to jail with probation are counted twice, once with incarceration and again with probation. For this reason, the sum of incarceration, probation, and other exceeds 100.

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