

Bureau of Justice Statistics Bulletin

Setting Prison Terms

The United States has experienced dramatic changes in the laws under which people are sent to prison and in the mechanisms that control how long they stay there. A decade ago, in most jurisdictions, the courts had primary control over who went to prison, subject to negotiations carried out in the plea-bargaining process, within broad limits set by legislative statute. The parole board controlled the length of the prison term within broad limits set by the court and by law.

This general model had many variations but was the predominant approach to setting prison terms. In the past decade, however, legislative control over the sanctioning process has increased, accompanied by concerns about sentencing disparities, doubts about the efficacy of rehabilitation, and increased interest in incapacitation and deterrence. At the same time in some jurisdictions, the judiciary and the parole boards have taken steps to formalize their control over specific components of the sanctioning process. This report covers the January 1983 status of the key forms this change has taken. They can be grouped in the following categories:

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- **Determinate sentencing**—sentencing systems under which parole boards no longer may release prisoners before their sentences (minus good time) have expired;
- **Mandatory prison terms**—statutes through which legislatures require a prison term always to be imposed for convictions for certain offenses or offenders;
- **Sentencing guidelines**—procedures designed to structure sentencing decisions based on measures of offense severity and criminal history;
- **Parole guidelines**—procedures designed to structure parole release decisions based on measurable offender criteria;
- **Good-time policies**—statutes that allow for reducing a prison term based on an offender's behavior in prison; and
- **Emergency crowding provisions**—policies that relieve prison crowding by

August 1983

In an earlier report, "A National Survey of Parole-Related Legislation," the Uniform Parole Reports program of the Bureau of Justice Statistics provided information on new laws affecting all aspects of parole, including time served in prison. With this report, the bureau inaugurates a new bulletin topic, "Setting Prison Terms," which focuses more sharply on one of the bureau's primary concerns—actual time served before release to parole supervision.

This first report presents the structures in place in January 1983 that determined the length of time a

person spent in prison in each of the States, the District of Columbia, and the Federal system. This presentation provides a framework for describing future changes as they go into effect. It contains a single summary picture for each State; it does not reflect all the variations within each State.

Subsequent reports on "Setting Prison Terms" will track legislative developments and related changes made in each State by the judiciary, the parole board, and the department of corrections after January 1983.

Steven R. Schlesinger
Director

systematically making inmates eligible for release sooner.

Prison crowding and prison term policy

Prison term policies such as mandatory prison terms and determinate sentencing influence the size of prison populations insofar as they affect 1) the number of offenders sentenced to prison and 2) the length of time the offender serves in prison before release. Prison statistics show that the prison population is increasing in every State, and parole statistics suggest that the length of time served in prison is also rising. One result has been increasingly crowded State prison systems. Consequently, many States have sought ways to modify prison terms. A variety of measures have been taken. They include—

- sentencing guidelines that use available prison capacity as a consideration in setting the length of terms (such as those in Minnesota);
- mechanisms for accelerating good time; and
- direct release of certain prisoners—usually those already close to their release date—under administrative provisions

(such as the emergency crowding law in Michigan, the use of commutation in Georgia, and the early-release program in Illinois).

Control over setting prison terms

The power to set prison terms is distributed in various ways among the legislative, judicial, and executive bodies in each State. In most jurisdictions, for most convictions, it is the judge who decides whether to punish by imprisonment or an alternative. This decision may be shared in part with other actors in the judicial system. Juries, prosecutors, and defense attorneys may recommend sentences. Sometimes dispositions are worked out in advance through plea-bargaining agreements involving the prosecutor, the defendant's attorney, and often the judge as well.

If a convicted offender is to serve a prison term, the judge selects a minimum term, a maximum, or both, within the range provided by the penal code for that offense or offense class. The parole board, based on a regular review of the offender's case, determines the appro-

priate time for the release of the offender to the community. Versions of this model continue to exist in most States. In each State, the legislature plays an important role in defining the limits of judicial and executive (parole board) powers, restricting discretion or providing leeway to determine the amount of time a person serves in prison.

Court discretion in length of prison terms

The States vary in the degree of court and parole board discretion provided by law. The States can be described as either broad or narrow in the degree of judicial discretion over sentence length (figure 1). Court discretion is defined as narrow if the range of sentencing options available to the judge is restricted by law to less than 1/3 the statutory maximum sentence length for each offense. For example, for persons convicted of a crime carrying a 12-year statutory maximum, judges with narrow discretion must select a sentence from within, at most, a 4-year range.

Under this definition, judicial discretion over sentence length is narrow in 12 jurisdictions. In the remaining 41 jurisdictions court discretion is classified as broad, although the judicially imposed sentence may have little impact on the actual length of time an offender remains in prison.

Parole board discretion

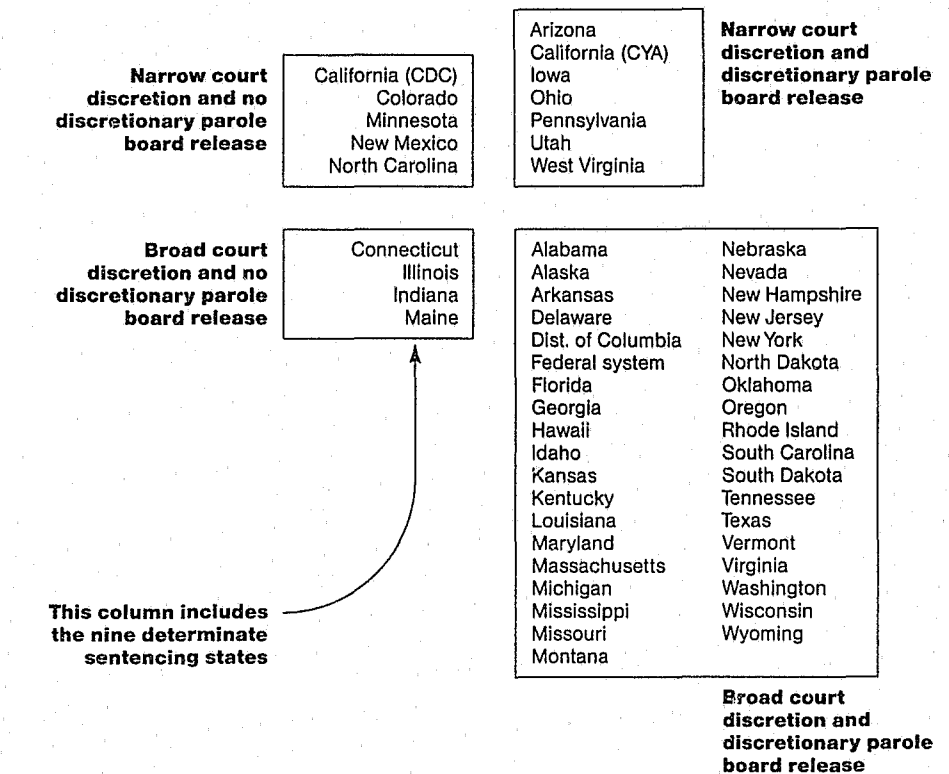
In most States, the parole board may alter the amount of time served in prison by releasing prisoners to community supervision before the maximum sentence date. In some jurisdictions the legislature has limited the releasing power of the parole board by requiring that prisoners must serve a flat minimum or proportion of the maximum sentence before becoming eligible for parole. In other jurisdictions parole board discretion is extensive—relatively unconstrained by law or not constrained at all. In cases where the discretion available to the parole board by law is broad, the board may nonetheless choose to exercise its discretion narrowly.

Forty-one States, the Federal system, the District of Columbia, and the California Youth Authority give some degree of discretion in the release of prisoners to the parole board (figure 1).¹ Where the parole board has this power, persons entering prison may have no clear idea of exactly when they will be released.

¹In some instances the California Department of the Youth Authority (CYA) has been distinguished from the California Department of Corrections (CDC). These two State agencies have separate parole boards. In addition to its juvenile commitments the California Department of the Youth Authority can accept at its discretion adult court commitments for those up to age 21; it may hold offenders up to age 25.

Figure 1

Control over the length of time a person serves in prison varies among jurisdictions



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Two persons receiving the same sentence may actually serve different lengths of time in prison. Thus the power of the parole board to release prisoners may diminish the role of the judge in setting prison terms. In the seven jurisdictions where judicial discretion is already relatively restricted—Arizona, California (CYA), Iowa, Ohio, Pennsylvania, Utah, and West Virginia—this parole board discretion further limits the power of the courts to influence time served in prison.

Determinate sentencing

In nine States—California (CDC), Colorado, Connecticut, Illinois, Indiana, Maine, Minnesota, New Mexico, and North Carolina—the discretionary power of the parole board to release prisoners early has been eliminated. Under the sentencing statutes in these nine States, prisoners receive fixed sentences, which they must serve in full, minus any time off for good behavior. These States are commonly known as the determinate sentencing States.

In all determinate sentencing States, parole boards continue to handle revocations and good-time decisions. Discretionary paroling may also continue in these States, to a limited extent, for persons sentenced to life imprisonment, for persons sentenced before the current

structure went into effect, or for youthful offenders.

Determinate sentencing first appeared in Maine in 1976. By 1979, six other States (California, Colorado, Illinois, Indiana, Minnesota, and New Mexico) had eliminated the discretionary releasing power of the parole board for all or most State prisoners. During the last 4 years, however, only two States, North Carolina and Connecticut, have abolished parole board discretion. The nine determinate sentencing States differ considerably in the size and nature of their correctional populations and the procedures under which prison terms are imposed.

In the four determinate States with broad judicial discretion (Maine, Connecticut, Illinois, and Indiana), the judge has great power to determine time served in prison. In Maine, statutes provide very broad ranges for four general classes of offenses (each carries a maximum but no minimum). The judge selects a single term from within that broad range, a flat sentence that must be served by the inmate. In Illinois, sentencing ranges are provided for seven classes of offenses. Extended ranges are provided for cases where aggravating factors are present. The judge selects one term from these ranges. The more serious the felony, the broader the sentencing

options. For a less serious felony such as shoplifting, the regular sentencing range is 1 to 3 years with an extended range of 3 to 6 years. For a more serious felony such as armed robbery, the regular term range is 4 to 15 years with an extended term range of 15 to 30 years.

By contrast, in the five determinate sentencing States where judicial discretion is narrow—California (CDC), Colorado, Minnesota, New Mexico, and North Carolina—the sentence prescribed by law becomes the most powerful factor in determining actual time served in prison. California law provides three specific sentencing terms for each offense or group of offenses. The middle term must be chosen in the absence of either mitigating or aggravating factors, the latter of which must be charged and proven in court. The prison term imposed must be justified by the proven facts of the case, and each case is reviewed by the Board of Prison Terms. In California, persons convicted of the same offense are likely to serve very similar periods of time in prison. Consequently, plea bargaining to negotiate the offense for which a defendant will be charged becomes particularly crucial in determining sentence lengths.

Mandatory prison terms

For a first-degree murder where the death penalty is not imposed, a prison term has always been customary, and this custom is usually written into law. Many States have identified other offenses for which a prison term is deemed mandatory, and, for these offenses, have legislatively removed the court's discretion over the in/out decision (the decision to impose a prison term or to provide an alternative such as probation, fines, or suspended sentence).

The four broad offense categories in which mandatory prison terms are most often legislated are violent crime, habitual crime, narcotics violation, and crime involving the use or possession of a firearm (figure 2). Almost all of the States have mandatory prison term statutes in at least one of these categories. For those convicted under such statutes, a judge has no choice but to impose a prison sentence.

The most common mandatory prison-term statutes are for violent crime (a category that includes murder); 43 States have such laws. Habitual-offender laws, aimed at the career criminal, are in effect in 30 States. Mandatory prison terms for narcotics and firearm offenses tend to be the result of more recent legislation. Twenty-nine States and the District of Columbia have drug laws with mandatory imprisonment provisions and 37 States and the District of Columbia now have gun laws with mandatory prison terms for certain violations.

Figure 2

Mandatory prison term statutes now exist in most jurisdictions, particularly for certain violent offenses

KEY

- V Violent crime
- H Habitual offender
- N Narcotic/drug law violation
- G Handgun/Firearm

	V	H	N	G
Federal system	—	—	—	—
District of Columbia	—	—	N	G
Alabama	V	H	N	—
Alaska	V	H	N	G
Arizona	V	H	N	G
Arkansas	V	H	—	G
California	V	H	N	G
Colorado	V	H	—	—
Connecticut	V	—	N	G
Delaware	V	H	N	G
Florida	V	—	N	G
Georgia	V	H	N	G
Hawaii	V	H	N	—
Idaho	V	H	N	G
Illinois	V	H	N	G
Indiana	V	H	N	G
Iowa	V	—	N	G
Kansas	—	—	—	G
Kentucky	—	H	—	G
Louisiana	V	H	N	G
Maine	V	—	—	G
Maryland	V	H	—	G
Massachusetts	V	H	N	G
Michigan	V	—	N	G
Minnesota	V	—	—	G
Mississippi	V	H	—	G
Missouri	V	—	N	G
Montana	V	—	N	G
Nebraska	V	H	—	—
Nevada	V	H	N	G
New Hampshire	V	—	—	G
New Jersey	V	—	—	G
New Mexico	V	H	—	G
New York	V	H	N	G
North Carolina	V	—	N	G
North Dakota	V	—	—	G
Ohio	V	H	N	G
Oklahoma	—	H	N	—
Oregon	V	—	—	G
Pennsylvania	V	H	—	G
Rhode Island	—	H	N	G
South Carolina	V	H	N	—
South Dakota	V	—	N	—
Tennessee	V	H	N	—
Texas	V	H	—	—
Utah	—	—	—	—
Vermont	—	—	—	—
Virginia	—	—	—	G
Washington	V	—	N	G
West Virginia	V	H	—	G
Wisconsin	V	—	—	—
Wyoming	V	H	N	—

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Statutes setting mandatory minimums are not necessarily the same as mandatory prison-term statutes. For example, a habitual-offender statute that dictates a mandatory minimum sentence or a statutory add-on term may be relevant only if the judge chooses a prison sentence. Mandatory prison-term statutes refer only to those crimes for which the court's discretion over the in/out decision has been eliminated by law.

Sentencing guidelines

In some States, the judge's decision to impose a prison term is constrained by the existence of sentencing guidelines (figure 3). Sentencing guidelines consider the relative severity of an offense along with an offender's prior criminal history and background to derive a recommended sentence for the court. Three States—Minnesota (1980), Pennsylvania (1982), and Utah (1979)—have established statewide sentencing guidelines with specific recommendations on the in/out decision as well as the length of prison terms. In Minnesota and Pennsylvania, sentencing guidelines have been approved by the State legislature and written into law. In Utah, the State court system has guidelines formulated by administrative policy. In Washington, Florida, and Maryland statewide guidelines have been legislatively ratified but in January 1983 were not yet in effect.

While the criminal statutes in virtually all States detail a general range of sentencing options deemed appropriate for any particular crime, sentencing guidelines attempt to direct the court to the available options it should choose in any given case. In each of the sentencing-guideline States, a sentence range is specified for most offenses based on the seriousness of the offense and the extent of the criminal history of the offender.

The range and form of the prescribed sentence can vary significantly from State to State, as the cases of Minnesota and Pennsylvania demonstrate. In Minnesota, a non-imprisonment alternative is the recommended sentence for most property crimes in which the offender's criminal history is not extensive. Pennsylvania guidelines, in contrast, generally specify non-confinement only for misdemeanor offenses where mitigating circumstances are involved. For normal misdemeanor cases, minimum ranges of 0 to 6 or 0 to 12 months are specified regardless of an offender's prior record. Furthermore, Minnesota sentencing guidelines provide judges with a relatively narrow sentence range for a given level of offense severity combined with a given history of criminal activity. From this range, one fixed term is chosen. Pennsylvania sentencing guidelines, however, are broad, specifying a minimum range, an aggravated minimum range, and a mitigated minimum range,

Figure 3

Three states have system-wide sentencing guidelines

<p>Sentencing guidelines are written into state statutes</p>	<p>Minnesota (1980) Pennsylvania (1982)</p>
<p>Sentencing guidelines are system-wide policy but are not written into state statutes</p>	<p>Utah (1979)</p>
<p>Sentencing guidelines may be applied in selected jurisdictions or on an experimental basis</p>	<p>Maryland (1981) Massachusetts (1980) Rhode Island (1980) Vermont (1982) Washington (1979) Wisconsin (1981)</p>

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from which the judge chooses a minimum term. (The maximum term is set by statute.)

A sentencing commission in each State monitors the use of the guidelines and departures from the recommended sentences by the judiciary. Written explanations are required from judges who depart from guideline ranges. The Minnesota Sentencing Guidelines Commission states that "while the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist." Pennsylvania sentencing guidelines stipulate that court failure to explain sentences deviating from the recommendations "shall be grounds for vacating the sentence and resentencing the defendant." Furthermore, if the court does not consider the guidelines or inaccurately

or inappropriately applies them, an imposed sentence may be vacated upon appeal to a higher court by either the defense or the prosecution.

Six other court systems—Maryland, Massachusetts, Rhode Island, Vermont, Washington, and Wisconsin—have sentencing guidelines that currently apply only in certain jurisdictions or to a limited range of offenses. In some cases these selectively applied guidelines represent the pilot phase of a study that may eventually lead to the establishment of a statewide sentencing guideline policy.

Parole guidelines

In 14 States, the District of Columbia, and the Federal system, the discretion of the parole board to release prisoners is limited by explicit parole guidelines enacted by the legislature or voluntarily adopted by parole boards (figure 4). In

Figure 4

Fifteen jurisdictions have system-wide parole guidelines

<p>Guidelines for paroling decisions are written into statutes</p>	<p>Federal system (1973) Florida (1978) New York (1977)</p>
<p>Guidelines for paroling decisions are system-wide policy but are not written into statutes</p>	<p>Alaska (1981) California (CYA, 1978) Dist. of Columbia (1982) Georgia (1980) Maryland (1979) Missouri (1982) New Jersey (1980) Oklahoma (1980) Oregon (1979) Pennsylvania (1980) Utah (1979) Washington (1979)</p>
<p>Guidelines for paroling decisions are selectively applied</p>	<p>California (CDC, 1977) Minnesota (1976)</p>

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California, parole release has been eliminated for all prisoners under the authority of the California Department of Corrections except for those serving life imprisonment terms. The Board of Prison Terms applies parole guidelines to determine prison-term lengths for those prisoners. In Minnesota, parole guidelines are used only for prisoners sentenced before the advent of determinate sentencing in 1980.

Although nearly all States have legislative statutes that define general criteria for parole release, formal parole guidelines attempt to make these criteria explicit and measurable. Parole guidelines are used by parole boards to measure the presumed risk that an offender will commit additional crimes while on parole based on such factors as the offender's prior convictions, substance abuse history, and prison behavior. A decision on when to release an offender (i.e., on how long a term should be served) is then made by the parole board based upon both the presumed risk and the severity of the current offense. Most guidelines allow for exceptions to specified term lengths if mitigating or aggravating circumstances are involved. Prison behavior, either good or bad, is often considered.

Reducing prison terms: Good-time policies

Good-time policies in most States significantly contribute to prison-term reduction. All but four States (Hawaii, Pennsylvania, Tennessee, and Utah) award prisoners days off their minimum or maximum terms for maintaining good behavior or participating in various prison activities or programs (figure 5). The amount of good time that can be accrued varies widely among States—from 5 days a month to 45 days a month in several States. Good time can be an incentive to encourage cooperative behavior, and can result in a major reduction of the sentenced term.

Good-time policies are often written into State statutes but may also be non-statutory system-wide correctional policies. Good time is typically awarded and administered by a State's department of corrections or by individual prison wardens.

Forty-one States, the Federal system, and the District of Columbia award good-time credit to prisoners for good behavior (figure 5). Typically, this credit is automatically awarded and subtracted from a prisoner's sentenced term at the time of prison entry and then rescinded in whole or in part for unsatisfactory behavior. In Oregon, good-behavior credit is subtracted from the maximum sentence and so does not affect a prisoner's parole eligibility date or actual time served unless the prisoner is not paroled and serves the

Figure 5

All but four jurisdictions have provisions for the administrative reduction of the length of time spent in prison

KEY
B Reductions for good behavior
P Reductions for program participation

	B	P
Federal system	B	P
District of Columbia	B	-
Alabama	B	P
Alaska	B	-
Arizona	B	-
Arkansas	-	P
California	-	P
Colorado	B	P
Connecticut	B	P
Delaware	B	P
Florida	B	P
Georgia	B	-
Hawaii	-	-
Idaho	B	P
Illinois	B	P
Indiana	B	-
Iowa	B	P
Kansas	B	P
Kentucky	B	P
Louisiana	-	P
Maine	B	P
Maryland	B	P
Massachusetts	B	P
Michigan	B	P
Minnesota	B	-
Mississippi	B	P
Missouri	B	P
Montana	B	P
Nebraska	B	P
Nevada	B	P
New Hampshire	-	P
New Jersey	B	P
New Mexico	B	P
New York	B	-
North Carolina	B	P
North Dakota	B	P
Ohio	B	-
Oklahoma	-	P
Oregon	B	P
Pennsylvania	-	-
Rhode Island	-	P
South Carolina	B	P
South Dakota	B	-
Tennessee	-	-
Texas	B	P
Utah	-	-
Vermont	B	P
Virginia	B	P
Washington	B	-
West Virginia	B	P
Wisconsin	B	P
Wyoming	B	P

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maximum term. But more often the minimum sentence is reduced by good time, so that good-time policies become a significant element in prison-term length. This is particularly relevant for States that have eliminated discretionary parole release.

A few States award good time in ways that do not reduce sentence length. In New Hampshire, for example, a number of "disciplinary days" are automatically added to the minimum term, and it is from this number that good behavior days are subtracted. If the prisoner accrues all of his good time, the disciplinary days will be canceled out, and his parole eligibility date will occur, as scheduled, on the completion of his minimum sentence. Otherwise, he is penalized by a delay in his eligibility date.

Good-time reductions based on positive actions of the prisoner are in effect in 33 States and the Federal system (figure 5). These reductions result from participating in various programs (work, school, rehabilitative counseling, medical research, blood donation) or from meritorious conduct (including success under minimum security). In January 1983, the California Department of Corrections eliminated automatic time off for good behavior; prisoners sentenced after that date must earn all their good time through work or school participation.

Emergency crowding provisions

Another, and slightly different, kind of prison-term reduction has come about in response to prison crowding. For example, Michigan's Emergency Overcrowding Act requires that when the prisons are over 100% capacity for 30 days, an emergency is declared, and all parole eligibility dates are moved forward by 90 days. Similar rollback schemes have been adopted by Connecticut, Georgia, Illinois, Iowa, Ohio, and Oklahoma and are pending in several other State legislatures.

Technical note

Information presented in this bulletin was sent to the Court Administrator, Parole Board Chairman, and Attorney General in each State for verification. The characterization of States is based on the laws in effect in January 1983.

Further reading

- For more information see--
- A National Survey of Parole-Related Legislation Enacted During the 1979 Legislative Session. Bureau of Justice Statistics, December 1979, NCJ-64218.
- Probation and Parole 1981, August 1982, NCJ-83647.
- Prisoners in 1982, April 1983, NCJ-87933.

Bureau of Justice Statistics Bulletins are prepared by the staff of the bureau. Carol B. Kalish, chief of data analysis, edits the bulletins. Marilyn Marbrook, publications unit chief, administers their publication, assisted by Julie A. Ferguson. The principal author of this bulletin is Jim Galvin of the National Council on Crime and Delinquency with the assistance of Brad Smith, Tanya Broder, Vince Valvano, Leslie Reiber, and David Schaitberger.

August 1983, NCJ-76218

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(revised July 1983)

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National Crime Survey

Criminal victimization in the U.S.:

- 1980-81 changes based on new estimates (BJS technical report), NCJ-87577, 3/83
- 1980 (final report), NCJ-84015, 4/83
- 1979 (final report), NCJ-76710, 12/81
- 1973-79 trends, NCJ-77639, 4/82

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- Violent crime by strangers, NCJ-80829, 4/82
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- Measuring crime, NCJ-75710, 2/81
- The National Crime Survey: Working papers, vol. I: Current and historical perspectives, NCJ-75374, 8/82
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- Issues in the measurement of crime, NCJ-74882, 10/81
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- Restitution to victims of personal and household crimes, NCJ-72770, 5/81
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- Criminal victimization in urban schools, NCJ-56396, 8/79
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- Prisoners in 1981, NCJ-82262, 5/82
- Prisoners 1925-81, NCJ-85861, 12/82
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- Trends in expenditure and employment data for the criminal justice system, 1971-77, NCJ-57463, 1/80

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- Legislative resource manual, NCJ-78890, 9/81
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- A guide to dissemination, NCJ-40000, 1/79
- Compendium of State legislation: NCJ-48981, 7/78
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- Survey of State laws (BJS bulletin), NCJ-80836, 6/82
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- Sourcebook of criminal justice statistics, 1982, NCJ-86483, 8/83
- Victim and witness assistance: New State laws and the system's response (BJS bulletin), NCJ-87934, 5/83
- BJS five-year program plan, FY 1982-86, 7/82
- Violent crime in the U.S. (White House briefing book), NCJ-79741, 6/82
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