



## Bureau of Justice Statistics Special Report

# Sentencing Practices in 13 States

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The sentencing of a convicted offender is a key event in the complex process by which criminals in the United States are brought to justice. The judge is acting for society in determining whether or not the offender will go to prison and, if so, for how long. This report will examine the sentencing of convicted felons in several States with respect to whether or not they are sent to prison and the lengths of their sentences.

### State law and policies

Every State has its own set of laws and practices for sentencing criminals, and the differences among them are substantial. An earlier brief overview of sentencing practices, Setting Prison Terms (Bureau of Justice Statistics Bulletin, NCJ-76218, August 1983), presents much useful descriptive information, as does a recent report by the New York State Division of Criminal Justice Services.<sup>1</sup> However, it requires more than 200 pages to describe the basic features of the sentencing laws in each State.<sup>2</sup>

In addition to the different laws that govern sentencing, there are differences in how specific offenses are defined and classified by the criminal code in each State.

In some States, the law specifies a rather wide range of sentence lengths for each crime; the judge has broad discretion in selecting a sentence from

A fundamental issue in the administration of justice concerns the type and length of sentences given to convicted offenders. In this Special Report, the Bureau of Justice Statistics reports findings from a survey of selected States.

Among key findings are the following: despite the wide diversity among States in their sentencing systems, there appears to be a reasonable consistency in the end results produced; incarceration is much more likely for serious crimes against the person than for property crimes or drug crimes; the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history; and rates of incarceration and sentence lengths appear comparable from State to State for similar crimes committed by persons with similar criminal records, when differences

within that range. In other States, the judge's discretion is limited by law to a relatively narrow range of sentence lengths.

The judge usually is empowered to decide whether or not an offender will be sent to prison at all; he can suspend a prison sentence, impose a sentence of probation or a fine or, in some cases, select an alternative to incarceration such as requiring the offender to make

among sentencing systems are taken into account. In most cases, these data were obtained from criminal justice Statistical Analysis Centers in the States. Such centers have been established with support from the Bureau of Justice Statistics in 40 States, the District of Columbia, Puerto Rico, and the Virgin Islands. In addition to providing data to BJS, their functions are the gathering, analysis, and dissemination of statistical information pertaining to crime and criminal justice in their States for the benefit of decisionmakers, criminal justice practitioners, and the public.

The Bureau of Justice Statistics will continue to report on sentencing practices in the States as further changes occur and will attempt to expand the data base to include all States.

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restitution or to perform community service. This discretionary power, however, is far from absolute; as of January 1983, 48 States and the District of Columbia had enacted laws mandating a prison sentence for certain serious offenses or under certain aggravating circumstances.<sup>3</sup> Examples include use of a firearm in committing a felony, certain violations of drug laws, and a history of prior felony convictions.

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The judge's sentence is not the only factor that determines the length of an offender's stay in prison. The parole board often has considerable discretionary power in deciding when a prisoner will be released. In some States, the board can release a prisoner at any time after incarceration. In at least nine States, parole board discretion has been abolished completely. Most parole boards have discretionary authority that falls between these limits. In addition, 47 States, the District of Columbia, and the Federal system have provisions that enable an inmate to earn "good time"; that is, a reduction in the length of the prison stay through good behavior or participation in certain programs.

#### Sentencing systems

Differences among sentencing systems are so great that any comparison of sentence lengths among States is nearly meaningless unless the sentencing systems are taken into account. In some States, sentences may be relatively short, but with a high probability that all or nearly all of the sentence actually will be served. In other States, the sentences may be very long, but most offenders will be released after serving only a fraction of the sentence imposed by the courts.

There has not been complete consistency in defining the various types of sentencing systems that are used by the States. The following definitions have been adapted from those developed by the New York State Division of Criminal Justice Services.<sup>5</sup>

**Indeterminate sentencing.** In jurisdictions that use indeterminate sentencing, the court sets upper and lower bounds on the time to be served. The lower bound may be explicit or implicit. The actual release date (and therefore the time actually served) is determined subsequently by parole authorities.

With minimum/maximum indeterminate sentencing, the court specifies both minimum and maximum prison terms, but the parole board determines the actual release date within those limits. The States vary as to whether "good time" may be deducted from the minimum, the maximum, or both.

With fixed indeterminate sentencing, only a single prison term is specified by the court, but it is treated as a maximum for which an associated minimum automatically is implied. The implied minimum might be zero for all sentences, one year for all sentences, or a fixed proportion of the maximum.

**Determinate sentencing.** The court specifies a fixed term of incarceration

which must be served in full (less any "good time" earned in prison). There is no discretionary parole release.

**Mandatory sentencing.** The court is required to impose an incarcerative sentence, often of specified length, for certain crimes or certain categories of offenders. There is no option of probation, suspended sentence, or immediate parole eligibility.

**Presumptive sentencing.** The judge's discretion is constrained by a sentence length that is set by law for each offense or class of offense. This sentence must be imposed in all unexceptional cases. When there are mitigating or aggravating circumstances, however, the judge is allowed to shorten or lengthen the sentence within specified boundaries, usually with written justification being required.

In recent years, a number of States have reformed their sentencing systems, most often changing from indeterminate sentencing to a determinate system in which presumptive or mandatory provisions are included and parole discretion is eliminated or drastically curtailed.

#### The judge's role

Individual judges differ in the rationales, attitudes, and beliefs that affect their sentencing decisions. A survey in Delaware<sup>6</sup> asked judges of the Superior Court to assign priorities to five possible rationales for sentencing decisions: rehabilitation; deterrence of the offender from further criminality through fear of punishment; deterrence of others; retribution; and incapacitation (protection of the public while the offender is incarcerated). The survey found "an absence of a common philosophy or rationale for punishment" among the judges and concluded that "the dispersion of action and opinion in the judiciary is as diverse as would be found in the general population."

It may be that, in at least some instances, the judge making a sentencing decision takes into account the possibility of early release through parole and the accumulation of "good time." As an illustration, the Delaware survey states that a judge would have to impose a sentence of 19 years to be sure that the person would remain incarcerated for at least 5 years. A striking example occurred recently in Maryland. A man who had murdered three people and wounded several others at his former place of employment was convicted on 75 charges and sentenced to 3 consecutive life terms plus 1,080 years.

Several States have instituted or are considering the use of sentencing guide-

lines. Such guidelines are aimed at improving the consistency and rationality of sentencing by basing sentencing decisions upon offense severity, the offender's criminal record, prevailing sentencing patterns, or some combination of these factors. The guidelines may be advisory, or they may be prescriptive and presumptive, requiring the judge to explain sentences outside the specified ranges.

#### Incarceration rates

When a convicted person is sentenced, the most fundamental decision is whether or not he or she will be incarcerated. The judge usually is free to make this decision but, in many States, incarceration is mandatory for certain serious offenses or for persons with prior felony convictions. Also, the judge may be required to provide written justification for any departure from presumptive guidelines.

Not every sentence to incarceration involves a substantial term of confinement in a State prison. In some States, a very short term may be imposed, which may be served in a county jail or State prison, in cases where the offender does not have a significant criminal record and where the offense was not especially serious or significant mitigating factors were involved. Such short sentences often are combined with other sanctions such as fines, restitution, performance of community service, or participation in drug or alcohol treatment programs. Several States make use of split sentences, which consist of a short prison term to be followed by an extensive period of supervised probation. Some sentences provide for part-time incarceration; typically, the person is released during the day to work at an outside job, but spends nights and weekends in confinement. In most of the data that follow, a sentence is considered incarcerative if it involves any amount of confinement.

**Specific offenses.** Table 1 shows the incarceration rates (percentage of convictions that resulted in sentences of incarceration) for certain categories of offenses in six States.

Because of the different ways that offenses are defined by statute in the various States and the different formats in which the States provided their data, and because of the different ways individual statutory offenses had to be combined to fit generic crime categories, the comparability of this information is somewhat limited. In particular, where different States show significantly different incarceration rates for the same crime category, this may be caused by differences in the specific offenses that were included in

Table 1. Incarceration rates for specific crime categories

Crime type	Iowa <sup>a</sup> 1980-83		New York 1982		Oklahoma 1978-82		Pennsylvania 1981		Washington 1971-82		Wyoming 1981-84	
	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
<b>All felonies</b>	<b>2,125</b>	<b>39.3%<sup>b</sup></b>	<b>22,287</b>	<b>44.5%</b>	<b>*</b>	<b>*</b>	<b>37,147</b>	<b>35.0%<sup>b</sup></b>	<b>78,036</b>	<b>20.3%</b>	<b>*</b>	<b>*</b>
<b>Serious violent crimes<sup>c</sup></b>	<b>161</b>	<b>74.5</b>	<b>7,380</b>	<b>67.7</b>	<b>7,472</b>	<b>57.3%</b>	<b>4,507</b>	<b>59.7</b>	<b>14,854</b>	<b>38.3<sup>d</sup></b>	<b>427</b>	<b>56.7%</b>
Criminal homicide <sup>e</sup>	22	86.4	893	90.6	599	78.1	484	73.3	1,834	52.8	72	88.9
Rape	28	92.9	224	97.8	618	71.0	198	77.3	4,530	27.2 <sup>d</sup>	86	68.6
Robbery	38	100.0	5,290	67.4	2,506	79.2	2,010	73.4	3,464	56.1	111	57.7
Aggravated assault	73	50.7	973	41.5	3,749	37.2	1,815	39.1	5,026	30.8	158	34.8
<b>Serious property crimes<sup>f</sup></b>	<b>849</b>	<b>31.2</b>	<b>6,585</b>	<b>36.2</b>	<b>19,822</b>	<b>36.5</b>	<b>9,131</b>	<b>43.9</b>	<b>40,506</b>	<b>19.3</b>	<b>1,309</b>	<b>35.0</b>
Burglary	351	36.5	5,124	38.8	9,168	43.6	3,165	61.3	*	*	731	37.4
Larceny	382	25.4	1,235	24.8	7,895	25.1	5,393	33.7	*	*	381	28.1
Auto theft	98	33.7	g	g	2,379	46.9	447	41.6 <sup>h</sup>	*	*	152	42.1
Arson	18	36.8	226	40.7	380	37.6	126	53.2	*	*	45	31.1
<b>Drug crimes</b>	<b>148</b>	<b>29.7</b>	<b>3,168</b>	<b>38.9</b>	<b>6,982</b>	<b>33.9</b>	<b>3,606</b>	<b>26.9</b>	<b>13,911</b>	<b>12.1</b>	<b>253</b>	<b>43.9</b>

\* Data not available.

<sup>a</sup> Three counties.

<sup>b</sup> Includes certain misdemeanors which would be classified as felonies in many other states.

<sup>c</sup> Criminal homicide, rape, robbery, and aggravated assault.

<sup>d</sup> Includes other sex crimes in addition to rape.

<sup>e</sup> Includes murder and non-negligent manslaughter.

<sup>f</sup> Burglary, larceny, auto theft, and arson.

<sup>g</sup> Auto thefts in New York are included with larceny.

<sup>h</sup> Due to statutory changes, many auto thefts in Pennsylvania are included with larceny.

the category rather than by differences in sentencing policy.

For example, drug offenses may range from smoking marijuana to the large-scale distribution of heroin. In the case of robbery, most States define several separate statutory offenses of different degrees of severity, depending upon such considerations as whether a weapon was used and the extent of injury to the victim. Incarceration is more likely (and sentence lengths are greater) for the more serious statutory offenses within a given category. When data for the various statutory offenses are aggregated, the combined incarceration rate for the entire category can be affected significantly by which statutory offenses are included and their relative prevalence.

Despite these limitations, table 1 shows quite clearly that incarceration is much more likely for serious crimes against the person than for property or drug crimes.

**Offense severity and criminal record.** It is useful to examine incarceration rates in terms of offense severity and the offender's criminal record, instead of relying upon definitions of specific offenses that are difficult to reconcile among the different States. In several States, the law groups offenses into classes of different severity, and in some cases the statutes define categories of offenders in terms of their prior criminal records. Where such legal categories do not exist, researchers have devised similar categories for use in their investigations.

The data in table 2 are presented separately for each State because of the different ways that offenders and offenses have been grouped into cate-

gories. These data show the percent of convictions that resulted in incarcerative sentences.

Table 2 shows that, in virtually all cases, the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history.

For the data from Illinois, New York, and Connecticut, the felony classes are defined by statute and are listed in decreasing order of severity. For Minnesota, the three tabulated severity categories are condensed from the ten levels of severity defined by the State's sentencing guidelines. For North Carolina and Maryland, offenses have been classified by the nature of the crime (violent crimes, property crimes, drug crimes, etc.), and these categories are listed in what is generally perceived to be the order of decreasing severity.

All of the offender classifications in table 2 are based on the number and seriousness of the person's previous convictions. The classifications in New York are defined by statute. Minnesota's sentencing guidelines define seven levels of criminal history scores; these have been condensed into the three levels used in the tabulation. The offender classifications were defined by researchers for Connecticut and by the sentencing guidelines advisory board for Maryland.

**Effects of guidelines and changes in sentencing laws.** The Minnesota guidelines were designed to embody retribution as the primary purpose of sentencing. Because of this, they place more emphasis upon the seriousness of the current offense and less upon the offender's criminal history

than usually had been the case in the past. The data in table 2 show that this objective was achieved. For example, in the case of the most severe offenses being committed by those with the least serious criminal histories, the incarceration rate increased from 47.4% to 79.0%. For those with moderately serious criminal histories who were convicted of the least severe offenses, the incarceration rate dropped from 38.4% to 9.6%.

The preguidelines data for Maryland were not used because of the small sample size (339 cases) and because no significant difference in incarceration rates had been observed between corresponding portions of the preguidelines and postguidelines samples. This similarity is not surprising, since the guidelines that were tested in Maryland were intended to reduce unwarranted variations in sentencing rather than to bring about a change in the aims or philosophy of sentencing.<sup>8</sup>

In North Carolina (table 2) incarceration rates increased for all types of felonies (except "morals" offenses) after determinate sentencing was instituted. This is somewhat surprising because the new legislation did not affect the judge's power to decide whether or not a convicted person would be incarcerated. It has been conjectured that the judges may have been influenced by the legislation in interpreting the specified prison terms as a tacit recommendation by the legislature for incarceration, or that the increased incarceration rates were merely the continuation of a previous trend toward more frequent use of imprisonment.<sup>9</sup>

**Arrest offense vs. charged offense vs. conviction offense.** The data for Connecticut (table 2) include some

misdemeanor convictions that resulted from plea bargaining where the original charge had been a felony. Plea bargaining, with respect to the charge and the sentence, is prevalent in many jurisdictions. The aggregate data from Connecticut for 1976-77 and 1979-80 cover 2,756 convicted persons. Only 92 were tried; the other 2,664, or 96.7%, were convicted as the result of guilty pleas. For the Maryland postguidelines sample of 2,928 convicted persons, 74.9% were convicted through guilty pleas.

Plea bargaining is not the only reason that the level of the offense may be reduced between arrest and conviction. Often the formal charge filed by the prosecutor is for a lesser offense than the one for which the police had made the arrest. The police need only show "probable cause" when making an arrest; the prosecutor must be prepared to prove guilt "beyond a reasonable doubt."

Table 3 shows data from Oregon covering persons who were arrested in 1979.<sup>10</sup> These data provide information on the relationship between incarceration rates and whether or not the conviction offense was the same as the arrest offense. These data also include the percentage of convicted persons who were sentenced to any incarceration and the percentage who were sentenced to at least 1 year. Incarceration rates were higher, for both violent crimes and property crimes, when the arrest offense and the conviction offense were the same.

#### Sentence lengths

Average (mean) sentence lengths for various offenses and groups of offenses are shown in tables 4, 5, and 6. The three tables cover, respectively, minimum/maximum indeterminate sentences, fixed indeterminate sentences, and determinate sentences. As noted earlier, extreme caution must be used in making comparisons among the different States because of differences in the statutory definitions of offenses and in the ways individual offenses have been aggregated. In general, the tables show that the longest sentences are imposed for serious crimes against the person.

Data for Illinois are shown for minimum/maximum indeterminate sentences (table 4) and for determinate sentences (table 6) during the years 1978-82. Determinate sentencing was initiated near the beginning of that period, but persons whose offenses were committed when the indeterminate sentencing laws were in effect were subject to punishment under those laws. The average lengths of deter-

**Table 2. Percent of convictions resulting in incarceration for selected States based on offense and criminal history classifications**

Illinois, 1979-81			Offender classification							
Offense class <sup>a</sup>	Number of convictions	Percent	Youthful		First offender		Repeat <sup>a</sup>		All offenders	
			Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
<b>All felonies</b>	<b>76,787</b>	<b>39.3%</b>								
M (murder)	1,092	99.9 <sup>b</sup>								
X	6,713	100.0								
1	1,748	57.0								
2	26,591	37.7								
3	31,547	26.5								
4	9,096	33.0								

  

New York, 1982			Criminal history <sup>a</sup>							
Felony class <sup>b</sup>	Number of convictions	Percent incarcerated	None		Moderate		Serious		All offenders	
			Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
<b>All felonies</b>	<b>2,722</b>	<b>7.5%</b>	<b>16,987</b>	<b>42.2%</b>	<b>2,578</b>	<b>99.1%</b>	<b>22,287</b>	<b>44.5%</b>		
A	2	50.0	439	95.7	25	100.0	466	95.7		
B	165	23.0	2,116	94.1	371	99.7	2,652	90.5		
C	587	14.3	2,780	77.2	507	99.4	3,874	70.6		
D	1,341	5.0	6,686	29.7	937	99.6	9,964	33.3		
E	627	2.2	4,966	12.7	738	99.6	5,704	21.6		

  

Connecticut, 1979-80 (statewide sample)			Criminal history <sup>a</sup>							
Felony class <sup>b</sup>	Number of convictions	Percent incarcerated	None		Moderate		Serious		All offenders	
			Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
<b>All felonies</b>	<b>377</b>	<b>45.1%</b>	<b>303</b>	<b>58.1%</b>	<b>327</b>	<b>77.8%</b>	<b>1,007</b>	<b>59.6%</b>		
A	1	100.0	2	100.0	3	100.0	6	100.0		
B	111	53.2	92	69.6	108	87.0	311	69.8		
C	78	48.7	58	62.1	69	79.7	205	62.9		
D	95	49.5	104	61.5	95	76.8	294	62.6		
Misdemeanor <sup>c</sup>	92	27.2	47	21.3	52	55.8	191	33.5		

minate sentences tend to fall between the average minimum and maximum lengths of corresponding indeterminate sentences. This is to be expected, since the latter represented only upper and lower bounds on the time that the convicted persons would serve.

There is a noticeable exception in the case of serious violent crimes as a group. For indeterminate sentences, the average minimum and maximum sentences were 131 months and 277 months; the average determinate sentence was only 102 months. This may be because the crimes in this group for which extremely long sentences are imposed, criminal homicides, take longest to process in the courts. A large percentage of such cases go to trial rather than being settled through guilty pleas, and it often takes considerable time to prepare and conduct the

property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

As a result, a large number of homicide sentences were for offenses that dated back to the era of indeterminate sentencing, while sentencing had not yet occurred for many homicides committed after determinate sentencing was instituted. The tables show that, for serious violent crimes as a group, 25% of the indeterminate sentences were for criminal homicide, in contrast to only 16% of the determinate sentences. This may account for the disproportionately long minimum/maximum indeterminate sentences.

Data for North Carolina show sentence lengths for fixed indeterminate sentencing in 1979 (table 5) and for determinate sentencing in 1981-82 after the enactment of the State's "Fair Sentencing Act" (table 6). The determinate sentences are shorter; this is

**Table 2. (Continued)**

Minnesota, 1978 and 1980-81		Criminal history score*							
Offense severity*	Number of convictions	None/Low		Moderate		High		All offenders	
		Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
<b>Before the introduction of presumptive sentencing guidelines</b>									
<b>All felonies</b>	<b>3,326</b>	<b>9.9%</b>	<b>732</b>	<b>46.2%</b>	<b>307</b>	<b>70.5%</b>	<b>4,365</b>	<b>20.2%</b>	
Low severity	1,872	4.7	385	38.4	162	62.2	2,420	13.9	
Moderate severity	1,210	10.5	273	46.7	109	73.1	1,592	21.0	
High severity	244	47.4	73	85.5	36	100.0	353	60.6	
<b>After the introduction of presumptive sentencing guidelines</b>									
<b>All felonies</b>	<b>4,031</b>	<b>6.5%</b>	<b>1,018</b>	<b>24.3%</b>	<b>451</b>	<b>70.7%</b>	<b>5,500</b>	<b>15.0%</b>	
Low severity	2,122	0.6	478	9.6	222	50.4	2,822	6.0	
Moderate severity	1,680	4.0	443	24.4	186	88.2	2,309	14.7	
High severity	229	79.0	97	95.9	43	100.0	369	85.9	

  

North Carolina, 1979 and 1981-82 (statewide sample)		Before Fair Sentencing Act*		After Fair Sentencing Act*	
Offense class	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Percent incarcerated
<b>All felonies</b>	<b>9,752</b>	<b>54.7%</b>	<b>3,034</b>	<b>62.8%</b>	
Class 1 (violent felonies)	2,231	79.5	666	84.5	
Class 2 (felonious larceny, breaking or entering, receiving stolen goods, etc.)	4,481	55.2	1,452	65.3	
Class 3 (fraud, forgery, embezzlement, etc.)	1,061	39.1	336	44.6	
Class 4 (drug felonies)	1,642	30.9	515	39.6	
Class 5 ("moral" felonies)	117	71.8	25	68.0	
Class 6 (other felonies)	220	35.9	40	60.0	

  

Maryland, 1981-82 (entire postguidelines sample)		Prior criminal record									
Type of offense	Number of convictions	None		Minor		Moderate		Major		All offenders	
		Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated	Number of convictions	Percent incarcerated
<b>Total</b>	<b>1,311</b>	<b>39.7%</b>	<b>973</b>	<b>65.2%</b>	<b>443</b>	<b>84.6%</b>	<b>201</b>	<b>89.1%</b>	<b>2,928</b>	<b>58.3%</b>	
Person	551	55.9	334	76.6	160	91.3	70	87.1	1,115	69.1	
Property	449	35.4	440	68.9	219	83.1	104	91.3	1,212	61.0	
Drug	311	17.0	199	37.7	64	73.4	27	85.2	601	32.9	

consistent because the earlier indeterminate sentences represented only an upper bound on the amount of time that would be spent in prison.

#### Offense severity and criminal record.

As would be expected, average sentence lengths are longest for the most severe offenses and for those offenders with the most serious prior criminal records. This is illustrated by the data for Illinois and New York in tables 7 and 8. The offense classes in both States and the offender classifications in New York are defined by statute.

#### Conclusions

While the most prominent characteristic of the sentencing systems used by the States is their wide diversity, there appears to be a reasonable consistency in the end results produced. The

highest rates of imprisonment and the longest sentences accrue to those who have been convicted of the most severe crimes and to those whose prior criminal histories are most serious. Rates of incarceration and sentence lengths are comparable from State to State for similar crimes committed by persons with similar criminal records, when differences among the sentencing systems are taken into account with regard to the meaning of the sentence in determining how long the offender actually will be imprisoned.

Many States have made fundamental changes in their sentencing systems in recent years, and this trend appears to be accelerating. No fewer than 5 of the 13 States that provided data for this report instituted comprehensive changes in their sentencing laws immediately before, during, or since the

periods covered by the data. Connecticut, Illinois, North Carolina, and Washington went from indeterminate to determinate sentencing, and Minnesota instituted the use of presumptive sentencing guidelines. At least two other States, Maryland and New York, are evaluating the use of sentencing guidelines. The changes from indeterminate to determinate sentencing and the introduction of guidelines appear to signal the intention of the States to make punishment more certain, more consistent, and more in keeping with their perceptions of the basic purposes of imprisonment.

#### Sources of data

Descriptions of the sentencing systems in the States that provided data for this report and characteristics of the data are critically important to the interpretation of the numerical information in this report. It is imperative that no attempt be made to interpret the numbers or to make comparisons between States without thoroughly considering this information. Different sentencing systems lead to sentence lengths that have widely different practical meanings. For example, a person sentenced to 10 years in California will serve all or nearly all of the 10 years; in Iowa or Maryland, there is a possibility of release after serving only a fraction of a similar 10-year sentence. In addition, there are substantial differences in how offenses are defined and classified in different States, as well as significant differences in the ways that the data from the States have been collected and aggregated.

**California.** The judge imposes a determinate term based on presumptive sentence lengths that are set by legislation. Three presumptive sentence lengths are specified for each class of offense; the middle one must be imposed unless there are mitigating or aggravating circumstances. The sentence must be served in full minus any "good time" reduction. There is no early parole release.

Data on sentence lengths for a number of offenses were obtained from two reports with the same title, Sentencing Practices under the Determinate Sentencing Law, by the California Board of Prison Terms. The data cover all persons in the State who entered prison from February 1979 through January 1980 (report dated February 11, 1981) and during calendar year 1981 (report dated February 10, 1983). Offenses such as murder, for which life imprisonment or the death penalty can be imposed, are not included. (Some sentences for second degree murder are included in the 1979 data. The penalty for that offense was

**Table 3. Oregon: Incarceration rates for persons arrested in 1979**

Conviction type	Incarceration rates for persons arrested for					
	Violent Crimes <sup>a</sup>			Property crimes <sup>b</sup>		
	Number of convictions	Percent of convictions	Percent incarcerated	Number of convictions	Percent of convictions	Percent incarcerated
<b>All convictions</b>	<b>858</b>	<b>100.0%</b>		<b>2,815</b>	<b>100.0%</b>	
Percent of all convictions resulting in:						
Any incarceration sentence			62.5%			38.3%
Incarceration sentence of at least one year			51.9			22.2
<b>Convictions where arrest offense and conviction offense are the same</b>	<b>323</b>	<b>37.6</b>		<b>1,650</b>	<b>58.6</b>	
Percent of these convictions resulting in:						
Any incarceration sentence			73.4%			40.5%
Incarceration sentence of at least one year			69.7			27.2
<b>Convictions where arrest offense and conviction offense are different</b>	<b>535</b>	<b>62.4</b>		<b>1,165</b>	<b>41.4</b>	
Percent of these convictions resulting in:						
Any incarceration sentence			55.9%			35.0%
Incarceration sentence of at least one year			41.1			15.2

<sup>a</sup> Criminal homicide, rape, robbery, and aggravated assault.

<sup>b</sup> Burglary, larceny, auto theft, and arson.

changed in November 1978; these data are for persons whose offenses were committed before that date, but who entered prison in 1979.)

**Connecticut.** The data used in this report cover sentences that were imposed during years when the State used minimum/maximum indeterminate sentencing with wide judicial discretion.

Subsequently, in July 1981, legislation was enacted to require the imposition of a determinate prison term. The judge selects the sentence length within wide limits defined by statute for each class of offense. Parole has been abolished; the entire term, less "good time," must be served.

Data were provided by the Connecticut Statistical Analysis Center in a report entitled *Sentencing Patterns in Connecticut*. The data cover samples of 1,749 persons who were convicted in 1976-77 and 1,011 who were convicted in 1979-80. Each jurisdiction in the State was sampled randomly; in some

cases, small jurisdictions were oversampled. Connecticut law defines four categories of felonies, Class A through Class D, in decreasing order of seriousness. Most of the data are presented in terms of these classes, although information on sentence length is available for certain specific crimes. Some misdemeanor convictions appear in the data; these result from plea bargaining when the initial charge was a felony.

**Illinois.** The judge sets a determinate term based upon a sentence range prescribed by legislation for each class of offense. There is no early release on parole, but "good time" can be earned.

Incarceration rates for persons convicted of felonies in 1979-81, obtained from the Administrative Office of the Illinois Courts, were provided by the Illinois Statistical Analysis Center. Because of differences in reporting by individual counties, these data are a mix of charge-based and offender-based information. That is, where a person was convicted on more than one charge, in some instances the data include each charge separately, while in other instances the person is represented only once in the data. Sentence lengths are derived from a report, *Statistical Presentation 1982*, published by the Illinois Department of Corrections in April 1983. These data are charge-based; each sentence is included separately where a person was sentenced on more than one charge. The data cover sentences that were imposed from 1978 through 1982. During those years, there was a transition from minimum/maximum indeterminate sentencing to determinate sentencing, and the report shows sentence lengths for both types of sentences. (The determinate sentencing law took effect in February 1978. Because a convicted person is subject to the penalties that were in effect when the crime was committed, however, a number of sentences in the 1978-82 period were imposed under the old indeterminate sentencing laws.)

Illinois law defines six categories of felony offenses. They are, in order of decreasing seriousness: Class M (murder), Class X, and Classes 1 through 4. Although for some specific offenses there is information on average sentence lengths, in most cases the data are broken down by class of felony.

**Iowa.** A prison sentence, when imposed, is automatically for a fixed indeterminate term prescribed by statute for each class of offense. The actual release date is determined by the parole board, but the prison stay cannot exceed the statutory sentence length.

**Table 5. Fixed indeterminate sentences, average (mean) sentence length in months**

Crime type	North Carolina, 1979 Statewide sample		Oklahoma, 1978-82			
	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)	Number of life sentences	Number of death sentences
<b>Serious violent crimes<sup>a</sup></b>	*	*	<b>4,367</b>	<b>123 mos.</b>	<b>179</b>	<b>24</b>
Murder <sup>b</sup>	160	552 mos.	291	168	150	24
Manslaughter	147	164	177	81		
Rape	*	*	443	168	6	
Robbery	681	224	2,017	157	12	
Aggravated assault	176	63	1,439	57	11	
<b>Serious property crimes<sup>c</sup></b>	*	*	<b>7,591</b>	<b>46</b>	<b>5</b>	
Burglary	1,486	68	4,201	53	2	
Larceny	443	52	2,077	31		
Auto theft	*	*	1,163	49	2	
Arson	*	*	150	55	1	
<b>Drug crimes</b>	<b>178</b>	<b>55</b>	<b>2,405</b>	<b>39</b>		

Note: Life sentences not included in computing mean sentence lengths.

\* Data not available.

<sup>a</sup> Murder, manslaughter, rape, robbery, and aggravated assault.

<sup>b</sup> North Carolina data are for second degree murder only. Oklahoma data include accessory to murder as well as first and second degree murder.

<sup>c</sup> Burglary, larceny, auto theft, and arson.

**Table 4. Minimum/maximum indeterminate sentences, average (mean) sentence length in months**

Type of felonies	Connecticut, <sup>a</sup> 1976-77 and 1979-80		Illinois, 1978-82 <sup>b</sup>			New York, 1982			Number of maximum life imprisonment sentences
	Number of incarcerative sentences	Minimum	Number of incarcerative sentences	Minimum	Maximum	Number of incarcerative sentences	Minimum	Maximum	
<b>All felonies</b>	*	*	<b>4,429</b>	<b>80 mos.</b>	<b>173 mos.</b>	<b>9,930</b>	<b>40 mos.</b>	<b>79 mos.</b>	<b>495</b>
<b>Serious violent crimes<sup>c</sup></b>	*	*	<b>2,229</b>	<b>131</b>	<b>277</b>	<b>4,999</b>	<b>53</b>	<b>99</b>	<b>359</b>
Criminal homicide <sup>d</sup>	22	91 mos.	564	346	743	809	130	156	304
Rape	*	*	125	154	356	219	67	156	10
Robbery	337	42	1,292	55	108	3,567	38	91	44
Aggravated assault	125	24	248	29	79	404	28	69	1
<b>Serious property crimes<sup>e</sup></b>	*	*	*	*	*	<b>2,388</b>	<b>25</b>	<b>59</b>	<b>8</b>
Burglary	175	24	1,057	21	60	1,990	25	61	8
Larceny	246	23	370	16	40	306	18	42	
Auto theft	*	*	*	*	*	f	f	f	
Arson	*	*	*	*	*	92	29	81	
<b>Drug crimes</b>	<b>213</b>	<b>22</b>	*	*	*	<b>1,233</b>	<b>26</b>	<b>59</b>	<b>117</b>

Note: Life sentences not included in computing mean maximum and mean minimum sentence lengths.

\* Data not available.

<sup>a</sup> Maximum-sentence and life-sentence data not available for Connecticut; "criminal homicide" data are for manslaughter only.

<sup>b</sup> Illinois life-sentence data not available.

<sup>c</sup> Criminal homicide, rape, robbery, and aggravated assault.

<sup>d</sup> Includes murder and non-negligent manslaughter.

<sup>e</sup> Burglary, larceny, auto theft, and arson.

<sup>f</sup> New York's auto theft included with larceny.

<sup>g</sup> Pennsylvania data include certain misdemeanors that would be classified

as felonies in many other States.

<sup>h</sup> In Pennsylvania, a life sentence has no associated minimum term. Release requires commutation by the Governor.

<sup>i</sup> Because of statutory changes, many auto thefts in Pennsylvania are included with larceny.

**Table 6. Determinate sentences, average (mean) sentence length in months**

Crime type	California, 1979 and 1981		Illinois, 1978-82		North Carolina, 1981-82 Statewide sample	
	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)	Number of incarcerative sentences	Sentence length (months)
<b>Serious violent crimes<sup>a</sup></b>	<b>8,981</b>	<b>59 mos.</b>	<b>14,641</b>	<b>102 mos.</b>	*	*
Murder <sup>b</sup>	180	91	820	332	165	453 mos.
Attempted murder	107	130	767	161	*	*
Manslaughter	730	60	701	61	144	82
Robbery	5,418	56	8,919	89	544	135
Aggravated assault	1,730	48	2,253	40	114	38
<b>Serious property crimes<sup>c</sup></b>	*	*	*	*	*	*
Burglary	5,973	31	10,494	47	1,352	47
Larceny	1,228	27	6,458	33	350	38
Auto theft	976	26	*	*	*	*
<b>Drug crimes</b>	<b>1,646</b>	<b>36</b>	*	*	<b>157</b>	<b>40</b>

Note: Data on life sentences not available.

\* Data not available.

<sup>a</sup> Murder, attempted murder, manslaughter, rape, robbery, and aggravated assault.

<sup>b</sup> Includes only second degree murder for California (1979 only) and for North Carolina.

<sup>c</sup> Burglary, larceny, auto theft and arson.

**Table 7. New York: Average (mean) sentence lengths in months, by class of felony and offender classification, 1982**

Felony class <sup>b</sup>	Offender classification						
	Youthful <sup>a</sup>			First offender			
	Number of incarcerative sentences	Minimum (months)	Maximum (months)	Number of incarcerative sentences	Minimum (months)	Maximum (months)	
All	203	14 mos.	43 mos.	7,171	40 mos.	82 mos.	390
A	1	12	36	420	182	87	390
B	38	14	44	1,991	49	128	
C	84	14	43	2,145	29	79	
D	66	13	41	1,985	19	51	
E	14	14	43	630	15	40	

  

Felony class <sup>b</sup>	Offender classification							
	Repeat <sup>c</sup>			All offenders				
	Number of incarcerative sentences	Minimum (months)	Maximum (months)	Number of incarcerative sentences	Minimum (months)	Maximum (months)		
All	2,556	42 mos.	76 mos.	105	9,930	40 mos.	79 mos.	495
A	25	243	108	24	446	184	86	414
B	370	91	177	47	2,399	55	133	47
C	504	51	97	19	2,733	33	81	19
D	931	29	58	14	2,982	22	53	14
E	726	19	38	1	1,370	17	39	1

**Note:** Life sentences not included in computing mean sentence lengths.  
<sup>a</sup> Persons classified as youthful offenders generally are sentenced as though the offense had been a Class E felony, regardless of the actual offense.  
<sup>b</sup> By statute, there are five classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. Violent and property offenses appear in all classes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.  
<sup>c</sup> Includes persons classified as second felony offenders, persistent felony offenders, second violent felony offenders, and persistent violent felony offenders.

count cases (1,760 with PSI's and 1,168 without) for which conviction and sentencing took place from June 1981 through April 1982.

The data provide information on incarceration rates for certain categories of offenses and offenders. Data from the preguidelines sample have not been used in this report because of the small sample size and the restriction of the sample to cases with PSI's.

**Minnesota.** The judge sets a determinate prison term based on sentencing guidelines that took effect in May 1980. The guidelines use information about the seriousness of the offense and the offender's criminal history to indicate whether the offender should be incarcerated and, if so, the presumptive range of sentence lengths. These ranges are quite narrow. If the judge departs from the guidelines, written justification must be presented. Parole release has been abolished, but the prison stay can be shortened through "good time." When the offender enters prison, a prescribed amount of "good time" is credited that can be reduced or eliminated as the result of unsatisfactory behavior while incarcerated.

The sentencing guidelines were designed to reflect retribution or "just

deserts" as the primary aim of sentencing. Other objectives were uniformity in sentencing and avoiding an increase in prison population. The guidelines currently measure criminal history in terms of the number of prior felony convictions, but they are being revised to take into account the severity of these prior offenses.

Data were taken from a report that investigates the impact of the sentencing guidelines.<sup>12</sup> The data show incarceration rates, in terms of the offender's criminal history and the seriousness of the offense, for a pre-guidelines group of 4,369 persons and a postguidelines group of 5,500 persons. The preguidelines group includes all persons who were convicted of felonies from July 1977 through June 1978; the data are based on a sampling of approximately 50% of that group. The postguidelines group consists of all persons convicted under the guidelines, from their inception in May 1980 until the fall of 1981.

**New York.** For most felonies, the judge imposes a minimum/maximum indeterminate sentence within limits that are specified by statute for each class and type of offense. The minimum term must be at least 1 year and not more than one-third of the maximum term.

The minimum for repeat offenders is generally half of the maximum term. The offender can be considered for parole after serving the minimum term.

New York defines five basic classes of felonies, Class A through Class E, in decreasing order of seriousness. Classes B through E are subdivided into violent and nonviolent felonies with different statutory sentence ranges. For a number of relatively serious offenses, imprisonment is mandatory, especially when the offender has a prior record of felony convictions.

Under New York law, there are different sentencing provisions for each of six categories of offenders. For a first offender, no special provisions apply; sentencing is governed only by the offense. A "youthful offender" is subject to relatively mild sentencing provisions under certain circumstances. Generally a youthful offender is sentenced as though the offense had been a Class E felony, regardless of the actual offense. The other four categories cover persons with prior felony convictions (second felony offender, persistent felony offender, second violent felony offender) and are subject to much harsher penalties.

The data for New York were provided by the New York Statistical Analysis Center and cover 22,287 felony convictions in calendar year 1982 that resulted from 1982 felony indictments. This is a subset of all 29,330 felony convictions in 1982, and could be biased by underrepresentation of cases with long processing times. The data include incarceration rates and sentence lengths broken down by offense, class of felony, and offender category. The unit of count is the indicted defendant; if there were several indictments of the same person, they are included separately in the data.

**North Carolina.** North Carolina used indeterminate sentencing until July 1981. The judge imposed a maximum sentence that could not exceed an upper limit prescribed by statute for each offense. In many cases, a minimum sentence also was imposed. There was wide parole discretion and generous provision for earning "good time" credit. In most cases, an inmate became eligible for parole after serving either the imposed minimum sentence or a fifth of the statutory upper limit, whichever was less.

Determinate sentencing was instituted by legislation that took effect on July 1, 1981. A presumptive sentence length is provided by statute for each offense. The court must impose a fixed determinate sentence of that length un-

less there are significant mitigating or aggravating circumstances. "Good time" credit can be accumulated but, until July 1984, there was no discretionary parole except for certain youthful offenders. Discretionary parole release was partially reinstated on July 1, 1984. Certain offenders considered to be good risks can be released into rigidly supervised community programs after serving at least half of their sentences.

A report evaluating the change to determinate sentencing provided data on incarceration rates and sentence lengths for a number of offenses, based on statewide samples of several thousand persons each in 1979 and in 1981-82, before and after the determinate sentencing legislation became effective.<sup>13</sup>

**Oklahoma.** The judge imposes a fixed indeterminate sentence that is the maximum amount of time for which the offender can be imprisoned. The sentence may not exceed an upper limit that is stipulated by statute for each offense. The actual date of release is determined by the parole board, which can release the offender at any time before the expiration of the imposed sentence. The initial parole hearing must take place before a third of the imposed sentence has been served.

Data covering each year from 1978 through 1982 were provided by the Oklahoma Statistical Analysis Center. The data include information on incarceration rates and sentence lengths for specific offenses. The offenses are those for which charges were filed originally; changes due to plea bargaining are not reflected in the data. A case-based system is used; that is, each charge is covered separately in the data, and so a person sentenced on more than one charge will account for several data entries.

**Oregon.** The judge imposes a fixed indeterminate sentence that may not exceed the maximum prescribed by statute for each class of offense. The sentence is the maximum duration of imprisonment. The parole board sets the actual release date, using guidelines that it has developed.

A report by the Oregon Statistical Analysis Center provided information on incarceration rates in 1979 for certain categories of offenses, broken down by whether or not the most serious conviction offense was the same as the most serious offense for which the person had been arrested.<sup>14</sup>

**Pennsylvania.** The judge imposes a minimum/maximum indeterminate sentence. For sentences with a maximum

**Table 8. Illinois: average (mean) sentence length in months, by class of felony, 1978-82**

Felony class <sup>a</sup>	Minimum/maximum indeterminate sentences			Determinate sentences	
	Number of incarcerative sentences	Minimum (months)	Maximum (months)	Number of incarcerative sentences	Sentence length (months)
All felonies	4,429	80 mos.	173 mos.	41,317	67 mos.
M (murder)	347	495	1,047	820	332
X	1,111	100	194	8,227	132
1	141	65	156	1,816	83
2	1,723	22	62	15,682	48
3	983	23	55	12,750	34
4	124	16	39	2,022	24

**Note:** Data on life sentences not available.  
<sup>a</sup> By statute, there are six classes of felony offenses that are based on the severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

of 2 years or more, the parole board determines the actual date of release, but release cannot occur before the expiration of the minimum sentence. Offenders generally are released at the expiration of the minimum term. When the maximum term is less than 2 years, release by court order may take place prior to the expiration of the minimum term.

The Pennsylvania Statistical Analysis Center provided data in a tabulation entitled Pennsylvania Judicial Sentencing Practices, 1978-1981. Information is given on incarceration for specific offenses. The data for 1981 are used in this report; these data are more complete and are estimated to be more reliable than the data for earlier years.

In addition to felonies, some offenses are included that are classified as misdemeanors under Pennsylvania law, but are punishable by more than 1 year in prison and would be considered felonies in many other States.

The data do not include those cases in which Accelerated Rehabilitative Disposition (ARD) was used. This is a type of probation that can be imposed by the court without a formal finding of guilt. It usually is used with non-violent first offenders. If this option were not available, most ARD cases probably would have resulted in convictions with no incarceration.

**Washington.** During the period covered by the data in this report, Washington used fixed indeterminate sentencing. The law defined three classes of felonies, each with a prescribed upper limit on sentence length. Where a prison sentence was imposed, it was for a fixed indeterminate term equal to the statutory maximum. The paroling authority determined the actual sentence length and the release date. The only restriction was that period of imprisonment could not exceed the statutory maximum sentence length.

A determinate sentencing law was enacted in July 1984. It provides for judicial consideration of the specific offense characteristics and the offender's prior record in selecting a determinate sentence from within a narrow statutory range.

The Washington Statistical Analysis Center provided data covering incarceration rates for certain offenses in 1971-82.

**Wyoming.** The judge sets a minimum/maximum indeterminate sentence within limits fixed by statute for each offense. The parole board establishes the actual release date from within the range of the sentence.

Data were furnished by the Wyoming Statistical Analysis Center, covering persons sentenced from January 1, 1981, through June 30, 1984. The data are offender-based; each convicted person is represented once in the data. Where a person was convicted on several charges, the data cover the most serious charge. The data were taken from two independent information systems, one covering probation and the other imprisonment. As a result, any person receiving a sentence other than probation or imprisonment is not covered by the data. Since other types of sentences are rarely used in Wyoming, these omissions are not believed to be significant.

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<sup>11</sup>See footnote 8.

<sup>12</sup>See footnote 7.

<sup>13</sup>See footnote 9.

<sup>14</sup>See footnote 10.

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