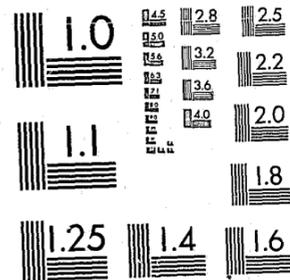


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10/4/82

Judicial and Executive Discretion in the Sentencing Process: Analysis of State Felony Code Provisions

Caroline S. Cooper
Debra Kelley
Sharon Larson

82310

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
Institute for Advanced Studies in Justice
Washington College of Law
The American University

A Program of the
Adjudication Division
Office of Criminal Justice Programs
Law Enforcement Assistance Administration
U. S. Department of Justice

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Caroline S. Cooper
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Sharon Larson

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This report was prepared in conjunction with The American University Law School Criminal Courts Technical Assistance Project, under a contract with the Law Enforcement Assistance Administration of the U.S. Department of Justice.

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FOREWORD

For a number of years, under the auspices of the Adjudication Division of LEAA's Office of Criminal Justice Programs, the Courts Technical Assistance Project has been involved in the sentencing research and reform efforts of many state and local jurisdictions. During the course of this work, we have found that one of the most critical problems confronting both researchers and practitioners involved in sentencing studies is the lack of a uniform definitional framework to describe and differentiate the sentencing processes of the various states. Although descriptive labels such as "mandatory", "indeterminate", or "presumptive" are frequently used to characterize various types of sentencing schemes, so many hybrids and permutations of these typologies have developed that these terms no longer serve to meaningfully describe most state sentencing systems.

In an attempt to provide a more consistent framework for understanding the sentencing processes in the various states and to encourage a more useful exchange of sentencing information and experience among jurisdictions, we have prepared this publication. Although we, too, have developed a set of working definitions to characterize the various state sentencing schemes, we have focused our study primarily upon describing the executive and judicial discretion permitted under the various state statutes at selected decisional points in the sentencing process. This approach, we feel, provides a basis for comparing specific aspects of the sentencing processes among jurisdictions and a foundation for understanding how each segment of the process in a given jurisdiction fits into the state's overall sentencing system.

We look upon this study as a beginning upon which further research into both statutory provisions and their practical applications can build. It is anticipated that the readers of this report will expand upon our research and develop more refined and comprehensive analyses of the sentencing processes in their jurisdictions and, particularly, the range of discretionary decisions that can be made. Such efforts, we feel, will promote a more informed understanding of the role which individuals in the various justice system agencies play in the sentencing process and the contribution which each can make to maximizing its effectiveness.

Joseph A. Trotter, Jr.
Director
Courts Technical Assistance Project
Institute for Advanced Studies in Justice
Washington College of Law

Gregory C. Brady
Project Monitor
Adjudication Division
Office of Criminal Justice Programs
Law Enforcement Assistance Administration

I. Introduction

A. Study Background and Methodology

This report is an outgrowth of a study begun in the Spring of 1981 by the Courts Technical Assistance Project at the Washington College of Law's Institute for Advanced Studies in Justice at The American. The study was undertaken for the purpose of describing and comparing the various state provisions relating to felony sentencing, and, particularly, the degree to which judicial and executive discretion is exercised in the sentencing system.

The research was begun with the intention of using the conventional sentencing scheme descriptors ("determinate", "indeterminate", etc.) developed by prior researchers to identify the various state sentencing models and to then describe the judicial and executive discretion permitted within each model. It soon became apparent, however, that these descriptors, although easily understood in theory, were difficult to apply in practice because of the diversity of sentencing systems that existed in the states.

To address this problem, the focus of the study was shifted from analyzing previously identified sentencing models to developing a more refined typology to delineate the nature of judicial and executive discretion that could be exercised in the sentencing process. It was also decided to base this analysis upon a review of the relevant sentencing statutes of each state so that a common frame of reference could be developed from which further research could be undertaken.

Following a general review of sentencing literature and a more rigorous study of selected relevant publications (see Appendix A) Courts Technical Assistance Project staff identified for statutory analysis the following six aspects of state sentencing systems in order to describe the relationship of these provisions to the degree of discretion permitted to judicial and executive officials:

- (1) the legislatively established sentencing classifications and penalties;
- (2) the range of allowable judicial discretion regarding sentence imposition and the degree of justification required;
- (3) provisions for sentence review;

- (4) the nature of parole decision-making authority;
- (5) provisions for good-time and other sentence reductions; and
- (6) provisions relating to the sentencing of special classes of defendants or offenses

In many cases, analysis of the relevant state statutory provisions regarding these sentencing process decisions required search of numerous code sections. For a number of states, the statutory review was supplemented by telephone interviews with individuals in relevant state judicial and/or executive agencies. A list of the individuals who provided special assistance in this regard is included in Appendix B.

Simultaneous with the analysis of sentencing discretion permitted under each state's statutes, a set of working definitions was developed to permit eventual classification of the states according to the nature of discretion statutorily permitted in the sentencing process. The "determinate" and "indeterminate" dichotomy provided an initial framework for categorizing each state. Those states in which the court could impose a fixed sentence to be served in full, less applicable good time reductions, were categorized as "determinate." Those states in which the court could impose a minimum, or minimum-maximum term, with the actual release date determined by the parole authority, were categorized as "indeterminate". As the study progressed, these broad classifications were refined with the addition of more discrete subcategories to more accurately reflect each state's sentencing provisions. In addition, a third classification, "partially indeterminate", was developed for those states in which the court could set only a maximum term, with the actual incarceration period determined by the parole authority.

It should be noted that, frequently, state sentencing statutes display a mix of determinate and indeterminate characteristics, depending upon the offense at issue. The sentencing classifications that are presented in this report represent the sentencing system which applies in each state to most statutory offenses; in many cases, exceptions can be found to this general categorization and many of these exceptions are noted in the descriptions of each state's sentencing process provided in Section III.

The project was developed and supervised by Caroline S. Cooper, a staff attorney at the Law Institute who has prepared this publication. The initial research was completed in May 1981 by Sharon Larson during her Washington Justice Semester internship at the Courts Technical Assistance Project. During the course of her work, she examined the sentencing provisions of 36 states. Following her internship, study of the sentencing provisions in the remaining 14 states and the District of Columbia was completed by Debra Kelley, a research associate at the Law Institute. Ms. Kelley also updated, where needed, Ms. Larson's research. The results of these efforts provided the basis for the present publication.

B. Description of the Statutory Classification Scheme Used in this Report

The classification framework and working definitions which were developed to characterize the state sentencing systems are provided below.

1. Determinate Sentencing Schemes

We have characterized as determinate sentencing systems those jurisdictions in which the court sets a fixed term of years which must be served in full, less any good time or other permissible sentence reductions, and early parole release discretion is eliminated.

The underlying philosophy of determinate sentencing is to maintain consistency and certainty in the sentencing process. In the ideal determinate sentencing system, the court sentences an offender to a fixed term of years as prescribed by statute. In most "determinate" states, however, some degree of judicial discretion is permitted, and for this reason, the following subtypes of determinate sentencing models were developed to depict the extent of judicial discretion permitted in the sentencing decision.

a. Mandatory Sentencing: jurisdictions in which the legislature has determined that the commission of certain offenses under specified circumstances requires a specified mandatory term of imprisonment. The court has no discretion over the decision as to whether or not to incarcerate (i.e., the in/out decision), or the actual sentence length.

b. Sentencing Guidelines:* jurisdictions in which suggested penalties have been developed by a legislatively established commission for specific types of offenses, based on the nature of the offense and offender involved. Deviation from the guidelines requires written jurisdiction.

* The existence of informal sentencing or parole guidelines which were not legislatively mandated was not a factor in classifying the states because it was felt that such programs are designed to structure existing judicial or parole discretion rather than to define it. Informal guidelines can be used in any type of sentencing scheme in which judicial or parole discretion exists.

c. Presumptive Sentencing: jurisdictions in which the legislature has established a "typical" sentence for each class of offenses which must be imposed unless mitigating or aggravating circumstances exist. If such circumstances do exist, the court may increase or decrease the "typical" sentence within a narrow range of years specified by statute.

d. Limited Range Discretion: jurisdictions in which the legislature has established a narrow range of sentences for each class of offenses within which the court can determine a fixed sentence term, based on the aggravating and/or mitigating circumstances in each case.

e. Broad Range Discretion: jurisdictions in which the legislature has established broad offense categories with a wide range of sentences permitted within each category. The court has considerable discretion in determining the actual period of incarceration within the legislatively prescribed sentence ranges.

2. Indeterminate Sentencing Schemes

We have characterized as indeterminate sentencing schemes those jurisdictions in which the court sets the minimum or minimum-maximum sentence term, within a statutorily permitted sentence range, but the actual length of incarceration and release date is determined by the parole authority.

The philosophy underlying the indeterminate form of sentencing is based upon the "rehabilitative ideal" that each offender should receive individualized treatment. By allowing the parole authority discretion in determining the actual release date, the incarceration period is linked to the offender's rehabilitative progress as well as to the nature of offense committed.

Two basic forms of indeterminate sentencing schemes are in use:

a. Statutory Minimum/Maximum. Systems in which the legislature allows the court discretion in setting the minimum as well as the maximum term of incarceration within a statutorily established sentence range. The Parole Board determines the actual release date at some point in the term established by the court.

b. Mandatory Maximum. Systems in which the legislature determines the maximum penalty that can be imposed, leaving the court with discretion to set only the minimum term. The parole authority, however, still retains the discretion to determine the actual release date within the term set jointly by the legislature and the court.

3. Partially Indeterminate Sentencing Schemes

The third category which was developed to depict state sentencing models has been termed partially indeterminate. Jurisdictions in this category are indeterminate in that the actual release date is determined by the parole authority but they are only partially indeterminate because the court has discretion to set only the maximum period of incarceration with no discretion over the minimum incarceration period.

C. Observations

The statutory analysis which was conducted for this study indicates that the majority of state sentencing systems fall within the partially indeterminate category. Although specific provisions may differ, 33 of the 51 jurisdictions studied have statutory sentencing schemes which permit the court to impose a term of years which becomes the maximum incarceration period for the offender, with the actual release date determined by the parole authority at some point before this maximum period expires. The remaining 18 states fall evenly between determinate and indeterminate patterns. More detailed explanations of these state classifications is provided in Section II.

In regard to sentencing provisions established by the state legislatures, 31 of the jurisdictions have established offense groupings ranging from three to ten offense classes, each with appropriate sentence terms which the court applies. In the remaining 21 jurisdictions, statutorily prescribed penalties are provided individually for each criminal offense.

Provisions for sentence enhancement for prior offenders exist in six jurisdictions. (See Chart I beginning on page seven). The terms of these enhancements and the conditions which trigger their applications, however, differ from jurisdiction to jurisdiction as do the definitions of who is a prior ("habitual") offender. Moreover, sentence enhancement provisions are not necessarily self executing, but in many jurisdictions are either discretionary with the court or can be invoked only upon the specific action of the prosecutor when the charges are filed.

Almost all jurisdictions (46) provide some sentence enhancement for the use or possession of a deadly weapon in the commission of a felony. (See Chart II beginning on page 16). It appears that the invocation of these enhancement provisions are, by statute, more automatic than those applying to habitual offenders and that the court is left with far less discretion in its sentencing decision regarding this component of the offense. The degree to which these provisions are applied in practice, however, deserves further study.

The relationship of provisions for parole eligibility and sentence reductions to the statutory provisions regarding criminal sentencing is critical to delineating the overall sentencing scheme in each jurisdiction and the degree of discretion that can be exercised in determining the actual incarceration period for each offender. Chart III beginning on page 21, together with the detailed description of each state's statutory sentencing provisions in Section III of this report, provide a foundation upon which this relationship can be analyzed.

Chart I
State Statutory Provisions for Felony Sentencing
and Habitual Criminal Enhancements

STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
ALABAMA	Murder: death, life without parole				
	Class A: life-99 years maximum 10 year minimum	Minimum: 15 years Maximum: life-99 years	Life or 99 years	Life without parole	
	Class B: 20 year maximum 2 year minimum	Class A sentence	Minimum: 15 years Maximum: life to 99 years	Life	
	Class C: 10 year maximum 1 year and 1 day minimum	Class B sentence	Class A sentence	15 year minimum life maximum	
ALASKA	Murder: 20-99 years				Prior offense must have occurred within past 7 years
	Kidnapping: 5-99 years				
	Class A: up to 20 years	10 years presumptive sentence	15 years presumptive sentence		
	Class B: up to 10 years	4 years presumptive sentence	6 years presumptive sentence		
ARIZONA	Class C: up to 5 years	2 years presumptive sentence	3 years presumptive sentence		Prior offense must have been committed within past 10 years
	Class 1 (Murder): death/life				
	Class 2: 7 years				
	Class 3: 5 years	Up to 3 times presumptive sentence			
	Class 4: 4 years	Up to 2 times presumptive sentence			
ARKANSAS	Class 5: 2 years				With 2 or more previous convictions, offender ineligible for parole
	Class 6: 18 months				
	Class A: 5-50 years		10-50 years		
	Class B: 3-20 years		5-30 years		
CALIFORNIA	Class C: 2-10 years		3-15 years		Either prior or current offense must be "violent" felony
	Class D: not to exceed 5 years		up to 7 years		
	Penalties prescribed for offenses individually	1-3 years additional term, depending on offense			

Chart I : State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
COLORADO	Class I: life/death		25-30 years term	Life	Prior felony convictions must be within past 10 years Applies only if current felony is sentencable to at least 5 year maximum
	Class II: 8-12 years				
	Class III: 4-8 years				
	Class IV: 2-4 years				
	Class V: 1-2 years				
CONNECTICUT	Capital Felony: life/death				Special provisions for crimes against the elderly and sexual assault with deadly weapon
	Class A: Arson Murder: life without parole				
	Class A Murder: 25 years-life				
	Class A: 10-25 years				
	Class B: 1-20 years Class C: 1-10 years	Sentenced as Class A or next higher offense class, depending upon offense			
DELAWARE	Class A: life	Life (for specified offenses)	Life (for specified offenses)	Life (for specified offenses)	
	Class B: 3-30 years				
	Class C: 2-20 years				
	Class D: 10 years				
	Class E: 7 years				
DISTRICT OF COLUMBIA	Penalties prescribed for offenses individually	Up to twice prescribed sentence	Up to life	Up to life	Not mandatory
FLORIDA	Capital felonies: life or death				
	Life felony: 30 years to life	None	None	Up to twice prescribed maximum	
	1st degree: 0-30 years or life				
	2nd degree: 0-15 years 3rd degree: 0-5 years				
GEORGIA	Penalties prescribed for offenses individually	Maximum prescribed by law	Maximum prescribed by law	Maximum prescribed by law without parole	
HAWAII	Class A: 20 years Class B: 10 years Class C: 5 years	5 year mandatory minimum, non-spendable, without parole	10 year mandatory minimum, non-spendable, without parole		

Chart I : State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
IDAHO	Penalties prescribed for offenses individually		Mandatory minimum term without parole	Mandatory minimum term without parole	Prior offenses must have been committed within past 10 years
ILLINOIS	Murder: 20-40 years of life Class X: 6-30 years Class 1: 4-15 years Class 2: 3-7 years Class 3: 2-5 years Class 4: 1-3 years	Life	Life	Life	Applicable only to "forcible" felony convictions
INDIANA	Class A: 30 years Class B: 10 years Class C: 5 years Class D: 2 years		30 years added to presumptive sentence	30 years added to presumptive sentence	If 10 years have passed since prior conviction, additional term can be reduced by up to 25 years
IOWA	Class A: life without parole Class B: 25 years maximum Class C: 10 years maximum Class D: 5 years maximum		3 years minimum term	3 years minimum term	Applies to Class C and D offenders only
KANSAS	Class A: life Class B: 5-15 years minimum 20 years-life maximum Class C: 1-5 years minimum 10-20 years maximum Class D: 1-3 years minimum 5-10 years maximum Class E: 1 year minimum 2-5 year maximum	The minimum and maximum term imposed cannot be less than the lowest penalty prescribed by law and greater than twice the highest penalty prescribed by law	The minimum and maximum term imposed cannot be less than the lowest penalty prescribed by law and greater than three times the highest penalty prescribed by law	Same as Two Priors	
KENTUCKY	Capital Offenses: death or try as Class A				All prior offenders must serve minimum of 10 years prior to parole eligibility
	Class A: 20 years to life		Up to life	Same as Two Priors	
	Class B: 10-20 years		20 years to life		
	Class C: 5-10 years		10-20 years		
	Class D: 1-5 years				

Chart I : State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

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STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
LOUISIANA	Penalties prescribed for offenses individually	1/3 maximum prescribed by law to twice the maximum	1/2 maximum prescribed by law to life, depending on offense	20 years-life, depending on offense	Current offense must be committed within 5 years of expiration of prior sentence
MAINE	Murder: 25 years-life Class A: 20 years Class B: 10 years Class C: 5 years Class D: 1 year				
MARYLAND	Penalties prescribed for offenses individually		Term not less than 25 years without parole	Life without parole	Applies only to "crimes of violence"
MASSACHUSETTS	Penalties prescribed for offenses individually		Sentenced to maximum term	Same as Two Priors	Prior sentences must have been at least 3 years each
MICHIGAN	Penalties prescribed for offenses individually	1.5 times maximum prescribed by law	Twice maximum prescribed by law	15 years-life, depending on offense	
MINNESOTA	Penalties prescribed in guidelines for offenses individually	3 years minimum	3 years minimum	3 years minimum	Applies only to sex offenses; prior convictions also reflected in guidelines sentence
MISSISSIPPI	Penalties prescribed for offenses individually		Non-violent crimes: maximum prescribed by law, without suspension or parole Violent crimes: life	Non-violent crimes: maximum prescribed by law, without suspension or parole Violent crimes: life	
MISSOURI	Class A: 10-30 years or life Class B: 5-15 years Class C: 7 years maximum Class D: 5 years maximum	5-100 years			Past conviction must be within past 5 years

Chart I : State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
MONTANA	Penalties prescribed for offenses individually	5-100 years additional or up to \$50,000 fine	10-100 years additional or up to \$50,000 fine		Current offense must be within 5 years of release for prior offense
NEBRASKA	Penalties prescribed for offenses individually		10-60 years unless greater penalty prescribed for offense	Same as Two Priors	
NEVADA	Penalties prescribed for offenses individually		10-20 years	Life, either with or without parole	
NEW HAMPSHIRE	1st degree murder: mandatory life 2nd degree, maximum: life Class A: maximum: 15 years minimum: 1/2 maximum Class B: maximum: 7 years minimum: 1/2 maximum Attempted murder: maximum: 30 years minimum: court's discretion		10-30 years	10-30 years	
NEW JERSEY	1st degree: 15 years		1st degree murder: 30 years-life; all other 1st degree offenders: 20 years-life	Same as Two Priors	Prior convictions must be within past 10 years
	2nd degree: 7 years		10-20 years	Same as Two Priors	
	3rd degree: 4 years		5-10 years	Same as Two Priors	
	4th degree: 9 months		18 months	Same as Two Priors	
NEW MEXICO	1st degree: 18 years 2nd degree: 9 years 3rd degree: 3 years 4th degree: 18 months	1 year increase, non-suspendable	4 year increase, non-suspendable	8 year increase, non-suspendable	

Chart I : State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
NEW YORK	Class A: up to life				Prior felony convictions must be for violent crime within past 10 years
	Class A-1: 15-25 years				
	Class B: 1-25 years	12-25 years	Same as One Prior	Same as One Prior	
	Class B-II: 3-8 years, 4 months				
	Class C: 1-15 years	8-15 years	Same as One Prior	Same as One Prior	
	Class D: 1-7 years	5-7 years	Same as One Prior	Same as One Prior	
	Class E: 1-4 years	At least 4 years	Same as One Prior	Same as One Prior	
NORTH CAROLINA	Class A: death or life				
	Class B: life				
	Class C: 20 years	2 year increase	4 year increase		
	Class D: 16 years				
	Class E: 12 years				
	Class F: 8 years				
	Class G: 6 years	1 year increase	2 year increase		
Class H: 3 years, 6 months	1.5 year increase	2.5 year increase			
	Class I: 2 years	6 month increase	1 year increase		
	Class J: 1 year				
NORTH DAKOTA	Class AA: life				Prior convictions must be Class B or above, or one Class B and two lower felonies
	Class A: 20 years		Life		
	Class B: 10 years		20 years		
	Class C: 5 years		10 years		
OHIO	1st degree: maximum: 25 years minimum: 4, 5, 6 or 7 years 2nd degree: maximum: 15 years minimum: 2, 3, 4 or 5 years 3rd degree: maximum: 10 years minimum: 1, 1.5, 2 or 3 years 4th degree: maximum: 5 years minimum: .5, 1, 1.5 or 2 years	Increased penalty allowable, though none specified	Same as One Prior	Same as One Prior	Discretionary with court

Chart I : State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
OKLAHOMA	Penalty prescribed for offenses individually				
	Felonies punishable by less than 5 years		Term not to exceed 10 years	Same as Two Priors	
	Felonies punishable by over 5 years		Term no less than 10 years	Same as Two Priors	
OREGON	Murder: death or life				
	Treason: mandatory life	30 years	Same as One Prior	Same as One Prior	
	Class A: 20 years maximum				
	Class B: 10 years maximum Class C: 5 years maximum				
PENNSYLVANIA	Murder I: death or life				
	Murder II: life				
	Murder III: life				
	1st degree felony: 20 years maximum				
	2nd degree felony: 10 years maximum				
	3rd degree felony: 7 years maximum				
	1st degree misdemeanor: 5 years maximum				
	2nd degree misdemeanor: 2 years maximum 3rd degree misdemeanor: 1 year maximum				
RHODE ISLAND	Penalty prescribed for offenses individually	Additional term of up to 25 years	Same as One Prior	Same as One Prior	
SOUTH CAROLINA	Penalty prescribed for offenses individually		Can apply maximum sentence	Life	

Chart 1: State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

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STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
SOUTH DAKOTA	Class A: death or life Class B: mandatory life Class 1: maximum: 1 life Class 2: maximum: 25 years Class 3: up to 15 years Class 4: up to 10 years Class 5: up to 5 years Class 6: up to 2 years	Can impose penalty for next higher offense class	Same as One Prior	Can impose sentence for Class I felony	
TENNESSEE	Penalties prescribed for offenses individually		Life, for certain specified offenses	Life	
TEXAS	Capital felonies: death or life				
	1st degree felonies: 2-99 years or life	15-99 years	Life		
	2nd degree felonies: 2-20 years	Penalty for 1st degree felonies	Life		
	3rd degree felonies: 2-10 years	Penalty for 2nd degree felonies	Life		
UTAH	Capital felonies: death or life	5 years-life			Prosecutor has discretion regarding decision to prosecute as habitual offender
	1st degree felonies: maximum: 1 life minimum: 5 years				
	2nd degree felonies: maximum: 15 years minimum: 1 year				
VERMONT	Penalties prescribed for offenses individually				Decision to sentence offender as habitual offender is discretionary with court; indictment must also show previous convictions and give notice to offender of habitual offender status

Chart I : State Statutory Provisions for Felony Sentencing and Habitual Criminal Enhancements

STATE	STATUTORY FELONY CLASSIFICATION SCHEME	SENTENCING ENHANCEMENT PROVISIONS			COMMENTS
		One Prior Felony conviction	Two prior felony convictions	Three or more prior felony convictions	
VIRGINIA	Class I: death or life Class II: life or minimum of 20 years Class III: minimum: 5 years maximum: 20 years Class IV: minimum: 2 years maximum: 10 years Class V: minimum: 1 year maximum: 10 years Class VI: minimum: 1 year maximum: 5 years				Prior convictions relate only to parole eligibility
WASHINGTON	Class A: up to 20 years Class B: up to 10 years Class C: up to 5 years	10 year mandatory minimum term	Mandatory life term for certain felonies specified by statute	Same as Two Priors	
WEST VIRGINIA	Penalty prescribed for offenses individually	5 years additional	Life, with 15 years minimum services before parole eligibility		Imposition of habitual offender provisions require D.A. to file with court prior to sentencing information setting forth prior convictions and sentences
WISCONSIN	Class A: life Class B: up to 20 years Class C: up to 10 years Class D: up to 5 years Class E: up to 2 years	up to 10 years additional up to 6 years additional			Prior convictions must be within 5 years
WYOMING	Penalty prescribed for offenses individually				

Chart II
State Sentencing Provisions Regarding the
Use/Possession of a Firearm or Other Deadly Weapon

STATE	SENTENCE ENHANCEMENT	COMMENTS
ALABAMA	No specific provision	
ALASKA	6 year presumptive sentence	Applies to first offenders involved in Class A offense
ARIZONA	Up to 3 times presumptive penalty	
ARKANSAS	Up to 15 year additional sentence	
CALIFORNIA	1 year additional sentence 2 years additional sentence	Applies to "deadly weapons" Applies to "firearms"
COLORADO	The mandatory minimum within the presumptive range must be imposed	Applies to "deadly weapons"
CONNECTICUT	Mandatory minimum of 5 years	
DELAWARE	Possession of firearm during commission of felony is Class B offense: minimum shall not be less than 5 years No probation or parole prior to 5 year service of term	
DISTRICT OF COLUMBIA	1st conviction: possible sentence up to life Two or more convictions: minimum term of 5 years and maximum not less than 3 times minimum imposed, which may be up to life	
FLORIDA	3 year mandatory minimum which must be served before parole eligibility or good time credits can apply	
GEORGIA	1st conviction: 5 years additional sentence 2nd conviction: 10 years, non-suspendable, without parole	
HAWAII	Use of firearm in Class A offense: 10 years Use of firearm in Class B offense: 5 years	

Chart II

STATE	SENTENCE ENHANCEMENT	COMMENTS
IDAHO	3-15 years mandatory minimum in addition to sentence	Applies if offender convicted of previous felony within last 10 years
ILLINOIS	Use becomes a Class X crime sentenceable to 6-30 years	Applies to certain weapons, as specified
INDIANA	No specific provisions but court's discretion is limited regarding sentence alternatives; probation cannot be imposed	Applies to use of a "deadly weapon"
IOWA	Minimum of 5 years service prior to parole eligibility	For use of "firearm"
KANSAS	Minimum prescribed by law must be imposed and is non-suspendable	Applies to use of "firearm"
KENTUCKY	Ineligible for probation or other non-incarcerative alternatives	Applies to use of "firearm"
LOUISIANA	No provision	
MAINE	Depending on crime committed, penalty imposed is either one class higher or a mandatory minimum provided by statute	Applies to use of "firearm"
MARYLAND	5-15 years mandatory minimum additional sentence	Applies to use of handgun; considered separate offense
MASSACHUSETTS	Additional term of 2.5-5 years, non-suspendable, at least 1 year must be served	Applies to possession of deadly weapon, including firearm, during commission of a felony
MICHIGAN	Armed robbery: 2 year mandatory minimum Carrying firearm or dangerous weapon with unlaw intent: up to 5 years	
MINNESOTA	Use of any dangerous weapon other than a firearm: 1st conviction: 1 year and 1 day or up to maximum prescribed by law for offense 2nd or subsequent conviction: 3 years or up to maximum prescribed by law Use of a firearm: 1st conviction: 3 year minimum 2nd and subsequent conviction: 5 year minimum	Use of any weapon

Chart II

STATE	SENTENCE ENHANCEMENT	COMMENTS
MISSISSIPPI	No specific provision for use of firearm Aggravated assault and/or attempt to commit serious bodily harm with deadly weapon: 20 years maximum Robbery with use of deadly weapon: 3 year minimum	
MISSOURI	1st conviction: 2-10 years additional 3rd conviction: 4-20 years additional	Applies to use of "dangerous weapon"
MONTANA	1st conviction: 2-10 years minimum, non-suspendable 2nd or subsequent conviction: 4-20 years non-suspendable	Applies to use of "dangerous weapon" while committing offense
NEBRASKA	3-10 years additional	Applies to use of "firearm"
NEVADA	Term of imprisonment equal to and in addition to term for crime committed	Applies to use of "firearm"
NEW HAMPSHIRE	Mandatory minimum with no parole or probation	Applies to use of "firearm"
NEW JERSEY	Possession of deadly weapon other than firearm or explosive during commission of felony is 3rd degree offense Possession of firearm or explosives during commission of felony is punishable as 2nd degree offense, sentence to run concurrently or consecutively within discretion of court	
NEW MEXICO	Non-capital felony: basic sentence prescribed increased by 1 year, non-suspendable 2nd conviction: 3 years increase non-suspendable	
NEW YORK	Possession during Class B offense: 6-25 years Possession during Class C offense: 4.5-15 years	Applies to use of "firearm"
NORTH CAROLINA	Use of firearm while committing felony: 7 year minimum if prior felon	
NORTH DAKOTA	During Class A or B felony: the minimum or a 4 year term must be imposed, non-suspendable During Class C felony: 2 year minimum	Applies to use or threat to use "firearm"
OHIO	No specific provision	

Chart II

STATE	SENTENCE ENHANCEMENT	COMMENTS
OKLAHOMA	No specific provision	
OREGON	1st conviction: minimum of 5 years 2nd conviction: minimum of 10 years 3rd conviction: minimum of 30 years	Applies to use or threat to use "firearm"
PENNSYLVANIA	Additional term up to 5 years which may run concurrently or consecutively within discretion of court	
RHODE ISLAND	1st conviction: term not less than 2 years nor greater than 10 years 2nd conviction: 5-20 years 3rd conviction: 10-life term	Applies to use of "firearm"
SOUTH CAROLINA	1st conviction: additional term of imprisonment not greater than 1 year or a fine of \$1,000, or both 2nd conviction: additional term of imprisonment not greater than 2 years 3rd and subsequent conviction: additional term of imprisonment not greater than 5 years	Applies to possession of firearm during commission of felony
SOUTH DAKOTA	1st conviction: 3rd class felony, penalty imposed is consecutive to sentence imposed for principal felony 2nd or subsequent conviction: treat as 1st Class felony Concealment of weapon with intent to commit felony is Class 5 felony	Applies to possession of firearm other than machine gun or short shotgun
TENNESSEE	Possession of firearm: 2-5 years consecutive with sentence for principle offense Use of firearm: 1st conviction: 5 year non-suspendable 2nd conviction: 10 year non-suspendable	
TEXAS	Penalty imposed is for next higher offense than principal offense	Applies to use of firearm
UTAH	Possession during 1st and 2nd degree felonies: 1-5 years Possession during 3rd degree felony: 5-15 years Prior conviction: 5-15 years	
VERMONT	No specific provisions	
VIRGINIA	1st conviction: use or display constitutes Class 6 felony, 1-5 years and/or \$1,000 fine	

Chart II

STATE	SENTENCE ENHANCEMENT	COMMENTS
WASHINGTON	1st conviction: 5 year mandatory minimum, non-suspendable 2nd conviction: 7.5 mandatory minimum, non-suspendable 3rd conviction: 15 year minimum, non-suspendable	Applies to use of "firearm"
WEST VIRGINIA	Offender must serve at least 3 years or maximum term imposed, whichever is less before becoming eligible for parole consideration	Applies to use of "firearm"
WISCONSIN	Class A: up to life additional term up to 5 years Class B: up to 20 years Class C: up to 10 years Class D: up to 5 years, additional term up to 4 years Class E: up to 2 years, additional term up to 3 years	Applies to use of "firearm"
WYOMING	1st conviction: additional term of imprisonment up to 10 years 2nd conviction: additional term of imprisonment up to 20 years	Applies to possession of "firearm"

Chart III
State Provisions Regarding Parole Eligibility
and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
ALABAMA	1/3 of sentence or 10 years, whichever is less	Death sentence commuted to life; 15 years	Class I: 75 days for every 30 days served Class II: 40 days for every 30 days served Class III: 20 days for every 30 days served Class IV: ineligible	30 days annually for a donation		
ALASKA	1/3 of term		One day for every 3 days served		3 days per month for meritorious conduct for first year; each succeeding year 5 days per month	
ARIZONA	1/2 or 2/3 of sentence, depending on sentence	Life: 25 years	Class I: 1 day for every 2 days served Class II: 1 day for every 3 days served			All offenders released 180 days prior to expiration of term
ARKANSAS	Within discretion of Board to release any time	Unless minimum term mandatory, first offenders released at any time. Second offenders: 1/3 minus good time. Subsequent offenders: 1/2 of sentence	Class I: 10 days per month Class II: 5 days per month Class III: ineligible		Meritorious conduct: 10 days per month additional	

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
CALIFORNIA	Expiration of sentence minus good time		1/3 reduction of term for good conduct or participation in prison programs			
COLORADO	Term to be served in full minus good time		15 days per month		Meritorious performance: additional 15 days per 6 months	
CONNECTICUT	Effective July 1, 1981, parole was abolished		For a sentence up to 5 years: 10 days for each month served for a sentence greater than 5 years: 12 days for each month served		Prison Industry: 1 day for every 7 consecutive days; Meritorious conduct: up to 120 days deductions from term	
DELAWARE	1/3 of sentence less good time	Mandatory minimum must be served in full	1st year of sentence: 5 days per month 2nd year: 7 days per month 3rd year: 9 days per month subsequent years: 10 days per month		Participation in rehabilitative prison programs; additional 5 days per month	
DISTRICT OF COLUMBIA	Expiration of minimum		Sentence of 1-3 years: 6 days per month 3-5 years: 7 days per month 5-10 years: 8 days per month over 10 years: 10 days per month			

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
FLORIDA	Parole guidelines have been developed which establish presumptive release dates based on seriousness of offense	Life: 25 years	1st and 2nd year of sentence: 3 days per month 3rd and 4th year: 6 days per month subsequent years: 9 days per month		One day for every day of productive work; 6 days per month for those unable to work but use time well; 1-6 days per month for no violations in past 6 months	
GEORGIA	1/3 of sentence		1st year: 1 month 2nd year: 2 months subsequent years: 3 months Not applicable to life sentences			
HAWAII	Within discretion of Board		10 days maximum for every month served (except for life sentences where no good time applies)			
IDAHO	Life terms or terms greater than 30 years: 10 years less than life or 30 year terms: 5 years or 1/3 term, whichever is less	Some must serve mandatory minimums	1-3 year sentences: 6 days per month 3-5 year sentences: 7 days per month 5-10 year sentences: 8 days per month 10 years or more: 10 days per month		Additional 5 days per month for meritorious conduct	
ILLINOIS	Service of term in full minus good time		One day for each day served			
INDIANA	Service of term in full minus good time		Class I: 1 day for each day served Class II: 1 day for every two days served Class III: no good time			

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
IOWA	Board may release at any time; individual may be required to serve term in full minus only good time	Class A: Governor must commute to a term of years; review within 5 years. Forcible felonies, previous conviction: 1/2 maximum imposed	1st year: 1 month 2nd year: 2 months 3rd year: 3 months 4th year: 4 months 5th year: 5 months subsequent years: 6 months		Trustee: additional 10 days per month	
KANSAS	Following service of minimum term less good time earned	Class A requiring life: 15 years must be served; if fire-arm used, must serve minimum term or sentenced as habitual criminal	1st year of imprisonment: 2 months applied to minimum and maximum 2nd year: 4 months applied to reduce minimum and maximum 3rd and subsequent years: 6 months applied to reduce minimum and maximum		Meritorious good time: additional 30 days	
KENTUCKY	Board may release offender at any time		Not more than 10 days per month		Additional 5 days per month for meritorious conduct or performance of duties	
LOUISIANA	1/3 of sentence	1st offenders with less than 5 year sentence: anytime prior to 1/3 of term; life: ineligible unless term commuted to a fixed period of years			Credit for time served in custody	

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
MAINE	No parole; service of term in full minus good time		10 days per month		Additional 2 days per month for performance of work duties	
MARYLAND	1/5 of term	Life: 15 years	5 days for each month		Additional 5 days per month for meritorious conduct and special work; no more than 5 days per month	
MASSACHUSETTS	Violent offenders must serve 2/3 of minimum sentence Non-violent offenders must serve 1/3 of minimum sentence	Certain crimes require service of a minimum of 2 years Offenders serving life terms for crimes other than 1st or 2nd degree murder eligible for Parole Hearing after serving 15 years	4 months-364 days: 2 1/2 days per month 2-3 years: 7.5 days per month 3-4 years: 10 days per month 4 or more years: 12.5 days per month	1 pint blood = 10 days	Work, educational programs permit reduction of up to 7 1/2 days per months served Confinement in prison camp: 2 1/2 days per month	
MICHIGAN	Expiration of minimum term minus good time	Mandatory minimum must be served in full	1st and 2nd year: 5 days per month 3rd and 4th year: 6 days per month 5th and 6th year: 7 days per month 7th - 9th year: 9 days per month 10th - 14th year: 10 days per month 15th - 19th year: 12 days per month over 20 years: 15 days per month			

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
MINNESOTA	Expiration of sentence minus good time	Life: 20 years Life with previous murder conviction: 25 years	1 day for every 2 days served			
MISSISSIPPI	1 year after admission to prison system within discretion of Board		1st year: 3 days per mo. 2nd year: 4 days per mo. 3rd year: 5 days per mo. 4th year: 6 days per mo. 5th year: 7 days per mo. 6th year: 8 days per mo. 7th year: 9 days per mo. 8th year: 10 days per mo. 9th year: 11 days per mo. Over 10 years: 15 days per month		Additional 30 days per year within discretion of Superintendent	
MISSOURI	1/2 of term; no one shall serve more than 2/3 of term	"Nondangerous offenders": 1/4 of term; Life: 30 years				
MONTANA	1/3 of sentence or one year (nondangerous offenders)	"Dangerous offenders": 1/2 of sentence	Medium I: 10 days per mo. Medium II: 13 days per mo. Medium II (after one year): 15 days per month		Educational programs: 13 days per month Self-improvement activities: 3 days per month	
NEBRASKA	Expiration of minimum term minus good time		1st year: 2 months 2nd year: 2 months 3rd year: 3 months subsequent years: 4 months		Additional 5 days per month for performance of duties	

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
NEVADA	1/3 of sentence or one year, whichever is greater		1st two years: 2 months 2nd two years: 4 months subsequent years: 5 months for each year served	Certain credits as Board may grant	Certain credits as Board may grant	
NEW HAMPSHIRE	Service of minimum term minus good time	Life: 18 years minus good time Life for murder I 40 years minus	90 days for each year of minimum term of service	Additional 5 days against minimum and maximum term for each donation	Meritorious conduct: 5 additional days against minimum and maximum term	
NEW JERSEY	Anytime within discretion of Parole Board unless minimum term imposed	Offense Classes 1 and 2 have a fixed minimum term to be served prior to parole consideration	One day for every 5 days served but can't reduce a mandatory minimum			
NEW MEXICO	Service of term in full minus good conduct	Life: 30 years	None, as of July 1979		Meritorious conduct: 10 days per month Support-service work: 0-5 days per month Industrial good time: 0-10 days per month Extra-Industrial good time: 0-10 days additional per month	
NEW YORK	Following expiration of minimum term		Up to 1/3 reduction of maximum term			

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
NORTH CAROLINA	For felony committed after July 1, 1981: 90 days before expiration of term minus good time		1 day for each day in custody		Additional reductions may be awarded for work, education, etc.	
NORTH DAKOTA	Anytime within discretion of Parole Board		Sentence of 1-3 years: 6 days per month sentence of 3-5 years: 7 days per month sentence of 3-10 years: 8 days per month sentence of 10 years or more: 10 days per month		Meritorious conduct: additional 2 days per month	
OHIO	Expiration of minimum term minus good time	Capital offense: 15 years	1 year: 5 days per mo. 2 years: 6 days per mo. 3 years: 8 days per mo. 4 years: 9 days per mo. 5 years: 10 days per mo.			
OKLAHOMA	1/3 of minimum term of an indeterminate sentence (or determinate if applicable)		No automatic statutory good time	20 days for every donation (4 donations maximum per year)	One day for every day enrolled in educational or vocational training programs	

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
OREGON	Anytime within discretion of Parole Board	For those convicted of "aggravated murder": 20-30 year service of term as specified by statute; Judge may recommend for any felony a minimum term to be served and parole board must respect this, except with affirmative vote of 4 board members	One day for every 2 days served		Prison Industry or certified educational programs: 1st year: 1 day for every 15 days 1st-5th year: 1 day for every 7 days subsequent years: 1 day for every 5 days Prison Agriculture: 1st year: 1 day for every 10 days subsequent years: 1 day for every 6 days	Work Camp: 1st year: 1 day for every 6 days Subsequent years: 1 day for every 4 days
PENN-SYLVANIA	Maximum term of confinement greater than 2 years: eligible following expiration of minimum term Maximum term of confinement less than 2 years: eligible any time prior to expiration of minimum term		No statutory good time			
RHODE ISLAND	Following service of 1/3 of term	Life term or designated habitual criminal: service of at least 10 years	No statutory good time			

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
SOUTH CAROLINA	Sentence less than 30 years: service of 1/3 of term Sentence greater than 30 years: service of at least 10 years Review after 1/4 of term	First offenders: service of minimum (1/4 of term)	Permitted by statute		Earned work credits: up to 1 day for every 2 days, with a maximum of 180 days per year	
SOUTH DAKOTA	1st offender: following service of 1/4 of term 2nd offender: following service of 1/2 of term Subsequent offender: following service of 3/4 of term (not applicable to life sentences)		To be determined within discretion of Governor and on recommendation of Parole Board			
TENNESSEE	Following service of minimum term or at least 1 year	Class X: following service of 40% of mandatory sentence	Class I: 30 days per month Class II: 22 days per month Class III: 10 days per month Class IV: no credit (Class X and repeat offenders)		Participation in prison programs: range from 1-15 days per month	
TEXAS	For offenders sentenced after August 29, 1977: following service of 1/3 of maximum term or minimum of 2 years	No offender serves more than 20 years without parole consideration	Trustee: 30 days for every 30 days served Class I: 20 days for every 30 days served Class II: 10 days for every 30 days served Class III: none	30 day commutation of sentence for every donation allowed (maximum of one per year)		Deductions apply to reduce the 1/3 of maximum term to be served prior to parole consideration

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
UTAH	Determination of parole eligibility after 6 months of confinement					
VERMONT	Any time within discretion of Parole Board		10 days per month		Additional 5 days per for special services rendered	
VIRGINIA	1st offenders: 12 years or 1/4 sentence, whichever is less 2nd offenders: 13 years or 1/3 sentence, whichever is less 3rd offenders: 14 years or 1/2 sentence, whichever is less subsequent offenders: 15 years or 2/3 sentence, whichever is less	Life: 15 years Two or more life sentences: 20 years	Class I: 30 days for every 30 days served Class II: 20 days for every 30 days served Class III: 10 days for every 30 days served Class IV: no good time			
WASHINGTON	Anytime within the discretion of the Parole Board	Mandatory minimums must be served prior to parole considerations Life term: following service of 20 years minus good time	Up to 1/3 reduction of sentence, at discretion of Parole Board			

Chart III : State Provisions Regarding Parole Eligibility and Sentence Reduction

STATE	PROVISIONS FOR PAROLE ELIGIBILITY		PROVISIONS FOR SENTENCE REDUCTIONS			COMMENTS
	GENERAL	SPECIAL PROVISIONS	GOOD TIME	"BLOOD" TIME	OTHER	
WEST VIRGINIA	Following service of minimum term of sentence Armed robbery: 1/3 of definite term	Life sentence, 1st conviction: service of 10 years Life sentence, 2nd conviction: service of 15 years	Term of sentence 1-3 years: 6 days per month served Term of sentence 3-5 years: 7 days per month served Term of sentence 5-10 years: 8 days per month served Term greater than 10 years: 10 days per month served			Life term not subject to good time reductions
WISCONSIN	Following service of 1/2 of term	Life term: service of 20 years minus good time	1st year: 1 month 2nd year: 2 months 3rd year: 3 months 4th year: 4 months 5th year: 5 months Subsequent years: 6 months		Outstanding work or educational performance: additional 1 day for every 6 days of such conduct	
WYOMING	Anytime within the discretion of the Parole Board		Discretionary according to Parole Board - no automatic statutory good time			

II. Classification of States According to the Nature of Discretion Permitted in the Sentencing Process

A. Summary of All States

The following tables summarize the state by state analysis of statutory sentencing provisions and the classification patterns that resulted. A discussion and commentary on each state's provisions is provided in Section II B.

Table I

**Classification of States According to the Nature of
Discretion Permitted in the Sentencing Process**

1. ALABAMA	Partially Indeterminate
2. ALASKA	Partially Indeterminate
3. ARIZONA	Partially Indeterminate
4. ARKANSAS	Partially Indeterminate
5. CALIFORNIA	Determinate/Presumptive Sentencing
6. COLORADO	Determinate/Limited Range Discretion
7. CONNECTICUT	Determinate/Presumptive Sentencing
8. DELAWARE	Partially Indeterminate
9. D.C.	Indeterminate/Statutory Minimum-Maximum
10. FLORIDA	Partially Indeterminate
11. GEORGIA	Partially Indeterminate
12. HAWAII	Partially Indeterminate
13. IDAHO	Partially Indeterminate
14. ILLINOIS	Determinate/Broad Range Discretion
15. INDIANA	Determinate/Presumptive Sentencing
16. IOWA	Partially Indeterminate
17. KANSAS	Indeterminate/Statutory Minimum-Maximum
18. KENTUCKY	Partially Indeterminate
19. LOUISIANA	Partially Indeterminate
20. MAINE	Determinate/Broad Range Discretion
21. MARYLAND	Partially Indeterminate
22. MASSACHUSETTS	Indeterminate/Statutory Minimum-Maximum
23. MICHIGAN	Indeterminate/Mandatory Maximum
24. MINNESOTA	Determinate/Sentencing Guidelines
25. MISSISSIPPI	Partially Indeterminate
26. MISSOURI	Partially Indeterminate
27. MONTANA	Partially Indeterminate
28. NEBRASKA	Indeterminate/Statutory Minimum-Maximum
29. NEVADA	Partially Indeterminate
30. NEW HAMPSHIRE	Indeterminate/Statutory Minimum-Maximum
31. NEW JERSEY	Partially Indeterminate
32. NEW MEXICO	Determinate/Presumptive Sentencing
33. NEW YORK	Partially Indeterminate
34. NORTH CAROLINA	Determinate/Presumptive Sentencing
35. NORTH DAKOTA	Partially Indeterminate
36. OHIO	Indeterminate/Mandatory Maximum
37. OKLAHOMA	Partially Indeterminate
38. OREGON	Partially Indeterminate
39. PENNSYLVANIA	Partially Indeterminate
40. RHODE ISLAND	Partially Indeterminate
41. SOUTH CAROLINA	Partially Indeterminate
42. SOUTH DAKOTA	Partially Indeterminate
43. TENNESSEE	Partially Indeterminate
44. TEXAS	Partially Indeterminate
45. UTAH	Partially Indeterminate
46. VERMONT	Partially Indeterminate
47. VIRGINIA	Indeterminate/Statutory Minimum-Maximum
48. WASHINGTON	Partially Indeterminate
49. WEST VIRGINIA	Indeterminate/Statutory Minimum-Maximum
50. WISCONSIN	Partially Indeterminate
51. WYOMING	Partially Indeterminate

Table 2

**Breakdown of States According to
Sentencing Classification**

Determinate	Partially Indeterminate
BROAD RANGE DISCRETION Illinois Maine	Alabama Alaska Arizona Arkansas Delaware Florida Georgia Hawaii Idaho Iowa Kentucky Louisiana Maryland Mississippi Missouri Montana Nevada New Jersey New York North Dakota Oklahoma Oregon Pennsylvania Rhode Island South Carolina South Dakota Tennessee Texas Utah Vermont Washington Wisconsin Wyoming
LIMITED RANGE DISCRETION Colorado	
SENTENCING GUIDELINES Minnesota	
PRESUMPTIVE SENTENCING California Connecticut Indiana New Mexico North Carolina	
Indeterminate	
STATUTORY MINIMUM-MAXIMUM District of Columbia Kansas Massachusetts Nebraska New Hampshire Virginia West Virginia	
MANDATORY MAXIMUM Michigan Ohio	

B. Discussion of State Classifications

ALABAMA (Partially Indeterminate)

The court is authorized to set a fixed term of years within a broad sentencing range provided by statute for each offense class. The sentence imposed by the court becomes the maximum amount of time for which an offender can be incarcerated. The paroling authority may release the offender following service of one-third of the sentence imposed, less good conduct reductions, or following service of ten years, whichever is less. An earlier release may take place with a unanimous affirmative vote of the Parole Board.

ALASKA (Partially Indeterminate)

The court sets a fixed term of years within a broad sentencing range provided statutorily for each offense class. This sentence becomes the maximum amount of time an offender can remain in prison. The paroling authority may release an offender after one-third of the term is served.

ARIZONA (Partially Indeterminate)

The court sets a fixed term of years on the basis of statutorily prescribed presumptive sentences for each offense class. The sentence imposed becomes the maximum amount of time for which an offender can be incarcerated, with the actual release date determined by the parole authority.

ARKANSAS (Partially Indeterminate)

The judge sets a fixed term of years within a broad sentencing range prescribed by statute for each offense class. This fixed term becomes the maximum term for which an offender can be incarcerated. The paroling authority has discretion to set the actual release date before the full sentence is served.

CALIFORNIA (Determinate/Presumptive Sentencing)

The court sets a fixed term on the basis of specific, legislatively suggested presumptive sentences for each offense class. The presumptive "mid" term must be imposed unless mitigating and/or aggravating circumstances exist. The sentence imposed must be served in full minus good time reductions. The possibility of an early parole release decision has been eliminated, and the offender undergoes a parole term after completing his sentence, minus good time.

COLORADO (Determinate/Limited Range Discretion)

The sentencing authority sets a fixed term of imprisonment within very narrow statutorily suggested penalty ranges for each offense class.. The sentence imposed must be served in full minus good-time and other sentence reductions permitted by statute. A one year parole term must be served in addition to the sentence imposed. The possibility for an early parole release decision has been eliminated.

CONNECTICUT (Determinate/Presumptive Sentencing)

Pursuant to legislation effective July 1, 1981, the court must order a definite term of imprisonment within broad statutorily prescribed limits established for each offense class. Parole is no longer available and the offender must thus serve in full the sentence imposed minus applicable good time reductions.

DELAWARE (Partially Indeterminate)

Certain offenses carry a mandatory minimum prison term and, in such cases, the Parole Board does not have the authority to release an offender prior to expiration of the mandatory minimum period. In all other cases, the court sets a fixed term of imprisonment within limits prescribed by statute for each class of offenses. This definite term which becomes the maximum amount of time an offender can be incarcerated. The release date is determined by the Board of Parole and, can occur after an offender has served one-third of his sentence, minus good time, unless a mandatory minimum term has been imposed by the court.

DISTRICT OF COLUMBIA (Indeterminate/Statutory Minimum-Maximum)

The court sets the minimum-maximum terms within the limits defined by statute. The paroling authority sets the actual release date within this indefinite term of years. An offender is usually released following the expiration of the minimum term; it is within the discretion of the Parole Board, however, to release the offender prior to the expiration of the minimum term.

IOWA (Partially Indeterminate)

The court sets a fixed term of imprisonment within the limits prescribed by statute for each offense class. The actual date of release is within the discretion of the Parole Board, which is limited only by the term imposed by the court, which becomes the maximum period for which an offender can be incarcerated.

KANSAS (Indeterminate/Statutory Minimum-Maximum)

The court fixes the minimum and maximum terms of imprisonment within statutorily provided minimum-maximum sentence ranges for each offense class. The paroling authority sets the actual date of release within the sentence range imposed by the court.

KENTUCKY (Partially Indeterminate)

The court imposes a flat, single term of years, according to the permissible sentence ranges established by statute for each offense class. The term imposed by the court becomes the maximum term that can be served by the offender. The paroling authority sets the actual date of release, limited only by the maximum imposed by the court.

LOUISIANA (Partially Indeterminate)

The court sentences an offender to a fixed term of years which is within the minimum-maximum sentence range provided by statute for the offense. The sentence imposed by the court is the maximum time the offender must serve. The actual release date is set by the Parole Board.

MAINE (Determinate/Broad Range Discretion)

The court sets a fixed term of years to be served in full, In imposing the sentence, the court is limited only by a legislatively prescribed maximum for each offense class and may set the penalty anywhere up to that maximum. The sentence imposed may be reduced only by good-time and other statutorily permitted sentence reductions. Parole has been abolished.

MARYLAND (Partially Indeterminate)

The maximum penalty for each offense is provided by statute and the court sets a fixed term of years which does not exceed the statutory maximum for those offenses for which a minimum and maximum sentence range is statutorily prescribed. The court may set the penalty below the statutory minimum unless it is mandatory. The actual date of release is within the discretion of the Parole Board which considers the offender for parole following service of one-fifth of the term imposed, and in certain cases, prior to service of one-fifth of the definite term.

MONTANA (Partially Indeterminate)

The court sets a flat term of years on the basis of suggested penalties, specified by statute, for each offense. This term becomes the maximum amount of time an offender can be incarcerated. The Parole Board can determine the actual date of release at any time within the maximum term imposed by the court. An offender becomes eligible for parole when he has served either one-third to one-half of his sentence, depending upon whether he has been designated by the sentencing court as a "non-dangerous" or "dangerous" offender, as defined by statute.

NEBRASKA (Indeterminate/Statutory Minimum-Maximum)

A minimum-maximum sentence range for each offense is provided by statute. Within this range, the court sets either the minimum and maximum period of incarceration, or simply the maximum term, thereby allowing the statutorily prescribed minimum term to apply. The Parole Board sets the actual release date at some time before the maximum term expires. Good time reductions may reduce the minimum term.

NEVADA (Partially Indeterminate)

The court sentences offenders to definite terms of imprisonment within the limits prescribed by statute for each offense. The paroling authority has discretion to release offenders after they serve one-third of their definite sentence.

NEW HAMPSHIRE (Indeterminate/Statutory Minimum-Maximum)

The court sets both a minimum and maximum term within the limits prescribed by statute for each class of offenses. The Parole Board sets the actual date of release within this sentence range. Release on parole usually occurs following service of the minimum term imposed less any applicable deductions for good conduct.

NEW JERSEY (Partially Indeterminate)

The court imposes a statutorily prescribed fixed sentence unless mitigating or aggravating circumstances exist. In such cases, the term may be decreased or increased within the limits set by statute. The actual release date is determined by the Parole Board. The court has the authority to impose a minimum term which must be served before an offender can be eligible for parole.

NEW MEXICO (Determinate/Presumptive Sentencing)

The court must impose the appropriate fixed term provided by statute for each offense degree unless mitigating or aggravating circumstances exist, in which case the sentence is increased or decreased accordingly. The term imposed is a fixed term of years to be served in full, minus good-time. The possibility of an early parole release decision has been eliminated. The judge includes in the sentence a period of parole to be served after completion of the prison term.

NEW YORK (Partially Indeterminate)

For most felonies the court sets both the minimum and the maximum sentence term within the limits provided by statute for each offense class. The minimum term must be at least one year and not more than one third of the maximum term imposed. The maximum term must be at least three years. The offender is eligible for parole after serving the minimum term imposed by the court.

NORTH CAROLINA (Determinate/Presumptive Sentencing)

The court must impose a specific presumptive sentence, based on fixed sentence terms provided by statute for each offense. Unless aggravating and/or mitigating circumstances exist, in which case the sentence may be increased or decreased. All felons convicted after July 1, 1981, are paroled ninety days before expiration of their term, minus good time, and are unconditionally released at the end of the ninety day period unless they have violated parole conditions.

NORTH DAKOTA (Partially Indeterminate)

The court imposes a fixed, flat term of years prescribed by law for each offense class. This term becomes the maximum term for incarceration. Unless specifically authorized, the court does not impose a minimum term but leaves the actual date of release (or minimum term) to the paroling authority.

OHIO (Indeterminate/Mandatory Minimum)

The maximum sentence must not exceed that prescribed by statute and the minimum term must not exceed one-half of the maximum. The court sets the minimum-maximum limits for the offender's sentence in accordance with the fixed maximum sentence and choice of four possible minimum sentences provided by statute for each offense class. Within this term imposed by the court, the Parole Board sets the actual release date.

OKLAHOMA (Partially Indeterminate)

Maximum sentence terms are provided by statute for each offense. The court imposes a fixed number of years which becomes the maximum amount of time for which an offender can be incarcerated. The actual date of release is within the discretion of the Parole Board, which considers an offender for parole following service of one-third of the definite term imposed. In rare cases, the court may, as an alternative, impose an indeterminate sentence.

OREGON (Partially Indeterminate)

The court imposes a fixed term of years which is within the maximum permitted by statute for the applicable offense class. This sentence becomes the maximum amount of time for which an offender can be incarcerated; the actual date of release is within the discretion of the Parole Board which uses guidelines that it has developed to determine the release date for each offender.

PENNSYLVANIA (Partially Indeterminate)

The court sets the minimum and maximum terms for imprisonment. The actual date of release is within the discretion of the Parole Board, which generally releases offenders serving a minimum term of more than two years at the expiration of the minimum term imposed. Offenders who are serving a minimum term of less than two years may be released prior to service of the minimum term.

RHODE ISLAND (Partially Indeterminate)

The court sets a maximum sentence within the penalty prescribed by statute for each offense. This term becomes the maximum time for which an offender can be incarcerated. The actual date of release is within the discretion of the Parole Board, which can release the offender following service of one-third of the term imposed by the court.

SOUTH CAROLINA (Partially Indeterminate)

The court imposes a definite term of years within the limits fixed by statute for the specific offense. This sentence becomes the maximum amount of time for which an offender can be incarcerated. The paroling authority may release the offender prior to serving the full term imposed. In most cases, an offender must serve at least one-third of the sentence imposed to become eligible for parole consideration.

SOUTH DAKOTA (Partially Indeterminate)

Felonies are divided by statute into eight classes, each of which has a maximum penalty attached. The court imposes a flat term of years, which becomes the maximum term an offender can be incarcerated. The parole authority has discretion to determine the actual release date. First offenders are eligible for parole after serving one-fourth of their sentence.

TENNESSEE (Partially Indeterminate)

For Class X offenses, (a total of eleven specified by statute), the court imposes a fixed, flat, term of years to be served in full by the offender. For all other offenses, a minimum-maximum term is set. The paroling authority determines the actual release date, in accordance with statutory provisions.

TEXAS (Partially Indeterminate)

Minimum-maximum sentence ranges are prescribed by statute for each offense degree. The jury, when imposing sentence, fixes a definite term of years which becomes the maximum sentence. If the sentence is imposed by the judge, however, a minimum-maximum range is set. In both cases, the Parole Board determines the actual date of release.

UTAH (Partially Indeterminate)

The court sets the minimum-maximum terms of imprisonment within the limits defined by statute for each class of offenses. The actual date of release is within the discretion of the Parole Board.

VERMONT (Partially Indeterminate)

Specific permissible sentence ranges are provided by statute for each offense. The court sets the maximum and minimum terms of imprisonment within the sentence range provided by statute. Parole can be granted only after the expiration of the minimum term imposed.

VIRGINIA (Indeterminate/Statutory Minimum-Maximum)

The court is required by statute to impose a minimum and maximum term of confinement within the limits set by statute for each offense class. The Parole Board determines the actual date of release in accordance with statutory provisions.

WASHINGTON (Partially Indeterminate)

Three classes of felonies, each with a prescribed maximum sentence limit, are established by statute. The court imposes a flat, single term of years, which is the maximum amount of time during which an offender can be incarcerated. Within this maximum period, the paroling authority determines the actual length of sentence and release date.

WEST VIRGINIA (Indeterminate/Statutory Minimum-Maximum)

The court imposes an indefinite term, setting the minimum and maximum terms within the limits defined by statute for the applicable offense. The Parole Board considers an offender for parole following service of the minimum period of the sentence imposed.

WISCONSIN (Partially Indeterminate)

The court imposes a flat, single term of years within the maximum term prescribed by statute for the applicable offense class. This term becomes the maximum term for which an offender can be incarcerated. The paroling authority may parole an offender at any time after he has served one-half of the term imposed.

WYOMING (Partially Indeterminate)

The court fixes an indefinite term of imprisonment, setting both a minimum and a maximum term within the limits set by statute for each offense. The Parole Board sets the actual date of release within the sentence range imposed by the Court.

III. Description of State Statutory Provisions Regarding Judicial and Executive Discretion

AlabamaPartially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Sentences for felonies are for a definite term of imprisonment, which can include hard labor, within the following limitations provided by statute:

- Murder: death, life without parole, or for a term of imprisonment not less than 10 years
- Class A: life, or a term of imprisonment not more than 99 years or less than 10 years
- Class B: term of imprisonment not more than 20 years nor less than 2 years
- Class C: term of imprisonment not more than 10 years nor less than 1 year and 1 day

Although the term set by the court is definite, the Parole Board has the discretion to release the offender on parole before the term has been served in full.

(Title 13A, §5-6)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The trial judge, limited by the minimum-maximum ranges prescribed by statute for each offense class, sets the term of imprisonment. The Parole Board however, sets the actual release date within this term.

b. Non-incarcerative Alternatives Available

Unless prohibited by statute, the court, in its discretion may impose a suspended sentence, probation, restitution and or fine. Fines for felonies are statutorily prescribed as follows:

Class A: any amount not to exceed \$20,000
 Class B: any amount not to exceed \$10,000
 Class C: any amount not to exceed \$5,000

In lieu of applying the above fine schedule, the court may impose a fine or order restitution in any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by commission of the offense.

c. Required Sentence Justification(1) All Cases

In all cases in which a sentence of death is imposed by the jury, if the court concurs with such an opinion it must set forth the basis for its reasoning in writing.

(Title 13A, §5-11, §5-33)*

3. Statutory Provisions for Sentence Review

If the jury finds an individual guilty of an offense defined by statute as punishable by death, and fixes the punishment accordingly, a hearing is held to aid the court in determining whether or not to sentence the defendant to death or life imprisonment without parole. The court may concur with the decision of the jury or it may refuse to accept the jury's sentence of death and in its discretion impose a sentence of life imprisonment without parole. In all cases, a judgment and sentence of death shall be subject to automatic review.

(Title 13A, §5-32, §5-33, §5-34)*

4. Nature of Parole Decision-Making Authority

Offenders must serve at least one-third or 10 years of the sentence, whichever is less, and receive a majority vote from the Parole Board in order to be granted parole unless the offender receives a unanimous affirmative vote of the Board approving an earlier release date. An offender whose death sentence was commuted to life by the Governor may become eligible for parole after serving a minimum of 15 years.

(Title 15, §22-28)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The "Alabama Correctional Incentive Time Act" establishes the following provisions relating to anyone serving a term of imprisonment except those serving a life sentence:

Class I prisoner: 75 days for each 30 days served under this classification.
 Class II prisoner: 40 days for each 30 days served under this classification.
 Class III prisoner: 20 days for each 30 days served under this classification.
 Class IV prisoner: No good time reductions.

These classes relate to the type of work performed and the offender's conduct and attitude of cooperation. No inmate may be placed in a class without having gone through and meeting the requirements of all lower classifications.

In addition to the above provisions, a deduction of 30 days from the term of sentence is allowable once a year for a donation of one or more units of blood to the American Red Cross.

All good time credits and blood credits may be forfeited for misconduct.

(Title 14, §9-40, §9-3)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

No special provisions exist.

b. Habitual or Repeat Offender

In all cases when it is shown that a criminal defendant has been previously convicted of any felony and after such conviction has committed another felony, he must be punished as follows:

On conviction of a Class C felony, the offender must be punished for Class B felony.

On conviction of Class B felony, the offender must be punished for Class A felony.

On conviction of Class A felony, the offender must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

In all cases where the defendant has been previously convicted of any 2 felonies and, after such conviction, has committed another felony, he must be punished as follows:

On conviction of a Class C felony, the offender must be punished for Class A felony.

On conviction of a Class B felony, the offender must be punished by imprisonment for life or for any term of not more than 99 years, but not less than 15 years.

On conviction of a Class A felony, the offender must be punished by a term of life or by imprisonment for any term not less than 99 years.

In all cases of previous convictions of any 3 felonies, after which the defendant has been convicted of another felony, the offender must be punished as follows:

On conviction of a Class C felony, the offender must be punished by life or by imprisonment for any term not more than 99 years nor less than 15 years.

On conviction of a Class B felony, the offender must be punished by life imprisonment.

On conviction of a Class A felony, the offender must be punished by life imprisonment without parole.

(Title 13A, §5-9)*

* Alabama, Annotated Code and 1981 Supplement.

AlaskaPartially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Sentence ranges are established by the legislature for murder, kidnapping, and three classes of felonies, as follows:

Murder:	20 to 99 years imprisonment
Kidnapping:	5 to 99 years imprisonment
Class A:	up to 20 years imprisonment
Class B:	up to 10 years imprisonment
Class C:	up to 5 years imprisonment

At least the minimum penalty must be imposed for murder and kidnapping. Presumptive sentences are established for offenders with prior convictions in Classes A, B and C and for the use of a firearm if a Class A offense is involved. Aggravating and/or mitigating circumstances increase or decrease these presumptive terms, within limits specified by statute.

(Title 12, §55.125 and §55.165)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The trial judge sets a single, fixed term of imprisonment on the basis of broad ranges set by the legislature and presumptive sentences statutorily provided in certain cases as well.

The term set by the court becomes the maximum time an offender can serve. The Parole Board sets the actual release date, although limited by any minimum term provided by statute and by the maximum term imposed by the court.

b. Non-Incarcerative Alternatives Available

The court may impose a fine, probation, suspended sentence, etc., as provided by statute.

c. Required Sentence Justification

(1) All Cases

For any sentence that exceeds 90 days, the court must prepare a sentencing report.

(2) For Deviations Only

When less than the statutorily prescribed minimum term is imposed, the court must set out reasons for its actions in writing on the record.

(Title 12, §55.005, §55.045, §55.035 and §55.025)*

3. Statutory Provisions for Sentence Review

Three judge panels review cases if aggravating and/or mitigating circumstances exist which are not specified by statute, and the court deems that injustice would result if they were not considered. On majority agreement, an offender may be resentenced.

(Title 12, §55.088)*

4. Nature of Parole Decision-Making Authority

Offenders must serve one-third of the term imposed by the court before becoming eligible for parole.

(Title 33, §15.060)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

One day of good time is provided for every three days of good conduct.

In addition, three days per month are allowed for working in a prison project or for exceptional meritorious conduct for the first year of the term. For each succeeding year, the offender may receive up to five days per month reduction.

If the offender violates prison rules, he may forfeit his good time credit.

(Title 12, §55.086 and Title 33, §15 et seq.)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

A first offender involved in a Class A offense committed with the use of a firearm receives a six year presumptive sentence.

b. Habitual or Repeat Offender

Presumptive sentences are established for defendants with prior convictions in Classes A, B, and C that have occurred in the past seven years. They are:

	<u>2nd Conviction</u>	<u>3rd Conviction</u>
Class A	10 years	15 years
Class B	4 years	6 years
Class C	2 years	3 years

(Title 11, §15.295, §16.200 and Title 12, §55.050, §55.040)*

* Alaska Statutes, 1970 and 1980 Supplement.

Arizona

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Offenses are divided into six classes. Class 1 applies to First Degree Murder for which the penalty is death or life imprisonment. Classes 2 through 6, the non-capital offenses, have established presumptive sentences enacted by the legislature as follows:

- Class 2: 7 years
- Class 3: 5 years
- Class 4: 4 years
- Class 5: 2 years
- Class 6: 18 months

For a first time conviction, sentences for Class 4, 5, and 6 offenses can be reduced 50% for mitigating circumstances and increased by 25% for aggravating circumstances. Offenses in Classes 2 and 3 can be reduced 25% for mitigating circumstances and increased 100% for aggravating circumstances.

(Title 13, §701-703)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

In imposing sentence, the trial judge is limited by the legislatively prescribed presumptive sentence. The judge sets a fixed term of years which becomes the maximum term for imprisonment. The paroling authority has discretion to release the offender before this term is served.

b. Non-incarcerative Alternatives Available

The judge can impose a sentence of probation, fine, etc., as specified by statute.

c. Required Sentence Justification

(1) All Cases

In all cases involving First Degree Murder, where the penalty is either death or life imprisonment, a separate hearing is held to review aggravating or mitigating circumstances present in the commission of the offense. The court must state in writing the reasons for the sentence imposed. The judge must present findings in the record pertaining to aggravating and mitigating circumstances at the time of sentencing.

(Title 13, §1643 et seq., and §1657)*

3. Statutory Provisions for Sentence Review

The defendant or the state may appeal a sentence on the grounds that it is illegal or that the sentence imposed does not comport with the presumptive sentence prescribed by statute.

(Title 13, §4032 and §4033)*

4. Nature of Parole Decision-Making Authority

The Board of Parole may release most offenders after one-half of their sentence has been served, unless the sentence requires that two-thirds of the sentence be served before parole can be considered. For those offenders serving a life sentence, parole consideration is given after 25 years is served unless the life term is commuted by the Parole Board to a certain term of years. If the life term is so commuted, the offender's earned good time is also applied to reduce the sentence term. (See #5 below).

If parole is revoked, the offender can be reincarcerated for the remainder of his original sentence.

All offenders are released on parole 180 days before the expiration of their prison term.

(Title 31, §401-461 and Title 91, §1604.6)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Offenders are classified as either Class 1 or Class 2 offenders for purposes of calculating the good time which can be earned and applied to reduce a sentence term. These classes are unrelated to the offense classes described in #1, above.

Class 1 prisoners receive one day of sentence reduction for every two days served. Class 2 prisoners, considered more dangerous, receive one day reduction for every three days served and must serve two-thirds of their sentence before becoming eligible for parole. Class 1 prisoners are eligible for parole after serving one-half of their sentence. Although offenders serving a life term may earn good time, this does not reduce the mandatory minimum of 25 years which must be served before parole consideration is possible. However, if the life term is commuted by the Parole Board to a certain term of years, the earned good time is applied to reduce the definite term of sentence.

All sentence reductions serve only to reduce the maximum term of imprisonment; they do not accelerate the parole eligibility date.

(Title 31, §251 and §252)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Use of a firearm in the commission of a Class 4, 5, or 6 offense results in the imposition of a mandatory fixed sentence which may be the presumptive sentence allowed for the particular offense class and as high as twice the presumptive sentence, with the "median" between these two points becoming the presumptive sentence for the new range.

Use of a firearm in the commission of a Class 2 or 3 offense results in the imposition of the mandatory fixed term which may range from the statutorily provided presumptive sentence for the particular class to as high as three times the presumptive sentence. The term usually imposed is the "median" between these two points, which is defined as three-fourths of the new presumptive range.

Prior convictions involving the use of a firearm result in higher penalties.

b. Habitual or Repeat Offender

Prior convictions result in increased sentences. A prior conviction of a Class 2 or 3 offense in the previous ten years results in a sentence of not less than the "median" nor more than three times the presumptive sentence with the "median" defined as three-fourths of the new presumptive range allowable under this provision. The offender is ineligible for parole until two-thirds of the sentence imposed has been served.

A prior conviction of a Class 4, 5, or 6 offense results in a sentence of not less than the "median" nor more than twice the presumptive sentence established by statute for the offense, with the "median" being defined as one-half of the new presumptive range. The offender is ineligible for parole until one-half of the sentence imposed has been served.

Two or more convictions result in higher sentences.

(Title 13, §604 and §701)*

* Arizona Revised Statutes, 1956 and 1978, and 1980 Supplement.

Arkansas

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Felonies are divided statutorily into four classes with suggested penalty ranges for each class:

- Class A: 5 to 50 years
- Class B: 3 to 20 years
- Class C: 2 to 10 years
- Class D: not to exceed 5 years

(Title 41, §1301-09 and §901-§904)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge must set a fixed term of imprisonment within the legislatively suggested range. This term becomes the maximum term of imprisonment that can be served. The Parole Board sets the actual date of release.

b. Non-incarcerative Alternatives Available

The judge may impose a fine, probation, and/or suspend sentence, except in the case of an offender with two or more previous convictions, or in the case of capital murder, which requires a sentence of death or life imprisonment

c. Required Sentence Justification

(1) All Cases

If the death penalty is imposed the jury or judge must state their findings in writing regarding aggravating and/or mitigating circumstances.

3. Statutory Provisions for Sentence Review

A death sentence is reviewed by the Supreme Court for possible error prejudicial to the defendant.

(Title 41, §1351)*

4. Nature of Parole Decision-Making Authority

The sentence received from the trial court, less good time earned serves as the maximum amount of time for which an offender can be imprisoned. The Parole Board has the discretion to release the offender before the maximum is served. A sentence of life imprisonment, however, requires that an offender serve 15 years or one-third of his sentence with credit for good time before becoming eligible for parole.

A first offender can be released any time unless a minimum prison term is required for the offense.

A second offender must serve one-third of the sentence minus good time before becoming eligible for parole.

Offenders with three or more convictions must serve one-half of the sentence.

(Title 43, §2805 through §2829)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Good time sentence reductions are permitted for meritorious conduct. For purposes of calculating good time, inmates are placed in three general categories on the basis of good behavior, work, or discipline. These categories are unrelated to the offense classes described in #1.

- Class 1: 10 days per month reduction
- Class 2: 5 days per month reduction
- Class 3: not entitled to reduction

(Title 43, §120.3 through §120.5)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

If a felony is committed with the use of a firearm, the maximum term for the felony is extended by 15 years (e.g., a Class B felony would have a penalty range of three to 35 years). Offenses in which being armed is an element of the offense (e.g., armed robbery) are excluded from this provision.

One-half of the sentence imposed must be served before the offender is eligible for parole.

b. Habitual or Repeat Offender

Two or more previous felony convictions result in extended terms. The suggested penalty range for two or more previous convictions is:

Class A: 10 to 50 years
 Class B: 5 to 30 years
 Class C: 3 to 15 years
 Class D: up to 7 years

An offender with two or more previous convictions is ineligible for probation. In addition, special provisions apply to repeat offenders regarding parole eligibility. (See No. 4 above).

(Title 43, §2336.1 and §2328.1, and Title 41, §1004 and §1001)*

* Arkansas Statutes, 1947 Annotates, and 1979 Supplement.

California

Determinate/Presumptive Sentencing1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Except for felonies sentenceable to death or life imprisonment, the legislature specifies three possible terms of imprisonment for each offense. The court orders the imposition of the middle term unless mitigating or aggravating circumstances are shown to exist. For example, robbery carries the following terms of imprisonment: 2 years, 3 years, or 5 years.

Enhancements to sentences may also be added for certain offenses or offenders as specified by statute.

(Penal Code 17)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The trial judge, limited by the legislatively enacted presumptive sentences, sets a fixed, definite term of imprisonment following guidelines enacted by the judicial council. The sentence imposed must be served in full minus good time reductions.

b. Non-incarcerative Alternatives Available

The court may impose probation, fine, restitution, etc., as specified by statute.

c. Required Sentence Justification(1) All Cases

No available data.

CONTINUED

1 OF 3

(2) For Deviations Only

The court must support its findings of aggravating and mitigating circumstances and must justify in writing its reasons for imposing a sentence which increases or decreases the middle presumptive term prescribed by statute.

(Penal Code 17)*

3. Statutory Provisions for Sentence Review

One year after an offender comes under the supervision of the Department of Corrections, his sentence becomes subject to automatic review by the Board of Prison Terms. In reviewing the sentence, the Board statistically compares one case to a group of other cases with similar circumstances in order to determine if the sentence under review is statistically disparate. If the Board finds such disparity, it submits a formal recommendation to the court requesting that the court If the court does resentence the offender, the new sentence imposed cannot be greater than the previous sentence imposed.

[Penal Code 17-1170 (f)]*

4. Nature of Parole Decision-Making Authority

The Board of Prison Terms has the power to waive parole supervision and can set parole terms and conditions of parole. Inmates, after completion of their sentence minus good time, undergo their parole term, not to exceed three years, unless the parolee is serving a life sentence, in which case his/parole term can be up to five years.

(Penal Code 17)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

An offender's sentence can be reduced by one-third for participation in prison programs and/or good behavior.

(Penal Code 17)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

If a separate charge is brought against the offender for use of a deadly weapon in the commission of a felony, upon conviction, the court has the authority to impose an additional prison term of one year.

If a separate charge is brought against the offender for use of a firearm during the commission of a felony, the court has the authority to impose an additional term of imprisonment of two years provided the offender is found guilty of such a charge. By statute, the court is required to impose enhancements for use of a deadly weapon and use of a firearm unless specific mitigating circumstances exist. If such circumstances exist, the court has discretion not to impose an additional term for conviction of the weapons charge.

b. Habitual or Repeat Offender

If an offender is convicted of a "violent felony" (as defined by statute) after having previously served a prison term for conviction of a violent felony, he is subject to an additional three year term as well as the prison term imposed for the subsequent felony conviction. However, if the offender's previous conviction and confinement was not for a "violent felony", or if the current conviction is not for a "violent felony", the offender is only subject to a one year enhancement to the sentence imposed for the present conviction.

[Penal Code 17-667.5 (c)]*

* California Penal Code, compact edition, 1981.

Colorado

Determinate/Limited Range Discretion

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

When a person has been convicted of a felony, the court sets a fixed term of imprisonment, which can be no longer than the term authorized by statute.

Felonies are statutorily divided into five classes, distinguished by presumptive ranges; each class includes a prescribed parole term:

- Class I: life imprisonment or death
- Class II: 8 to 12 years, one year of parole
- Class III: 4 to 8 years, one year of parole
- Class IV: 2 to 4 years, one year of parole
- Class V: 1 to 2 years, one year of parole

In the case of Class I felonies, a separate sentencing hearing is required to determine the existence of aggravating and/or mitigating circumstances.

(Title 16, §11-103)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge sets a definite term of years based on a presumptive range. The term he sets must be served in full minus good time. At the time of sentence imposition, an additional year of parole is added. No provision is made for an early release date.

b. Non-incarcerative Alternatives Available

The court may impose probation, as provided by statute.

c. Required Sentence Justification

(1) All Cases

No specific provision.

(2) For Deviations Only

Whenever a judge modifies a sentence from that prescribed by statute, he must state the unusual and extenuating circumstances that justify a deviation from the presumptive range.

In cases in which the death penalty is imposed, the court must state in writing its findings of aggravating circumstances beyond a reasonable doubt.

(Title 16, §11-301 through §11-305, §11-101 through §11-501)*

3. Statutory Provisions for Sentence Review

The death penalty is automatically reviewed by the state Supreme Court. In addition, when the sentence imposed is outside of the presumptive range, the Court of Appeals automatically reviews the sentence.

(Title 16, §11-103)*

4. Nature of Parole Decision-Making Authority

The court sets a fixed term of years which must be served in full minus good time. As to any person sentenced after July 1, 1979, the division of Adult Services provides a one year parole supervision term for Class II, III, IV or V felonies.

Conditions of parole are established by the state Board of Parole prior to the offender's release from incarceration. If parole is revoked, the offender may be reincarcerated for up to six months. Reincarceration and parole supervision are never more than one year.

(Title 17, §1-101 through §1-304)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Fifteen days per month good time sentence reduction are earned by an offender for abiding by institutional rules, diligence in work, etc. An additional fifteen days per six months may be deducted for "outstanding" performance in work or study, etc.

(Title 17, §1-101)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Existing law requires that the minimum sentence within the presumptive range be imposed for the use of a "deadly weapon" in the commission of certain crimes. This term is non-suspendable.

b. Habitual or Repeat Offender

Any person with two prior felony convictions in the past ten years, who is convicted of a third felony which has a maximum penalty of five years, shall be punished by imprisonment for 25 to 30 years.

Any person with three prior felony convictions shall, on conviction of a fourth, be sentenced to imprisonment for his natural life.

c. Other

Any person convicted of a crime of violence must be imprisoned for the minimum term within the presumptive range provided statutorily for such offense.

(Title 16, §13-101 through §13-103)*

* Colorado Revised Statutes, 1973 and 1980 Cumulative Supplement, Volume 8.

ConnecticutDeterminate/Presumptive Sentencing1. Statutory Provisions Regarding Sentencing Classifications and Penalties

As of July 1, 1981, the court must order a definite term of imprisonment within these statutorily prescribed limits:

Capital Felony: life imprisonment or death
 Class A Arson Murder: life imprisonment without benefit of parole
 Class A Murder: 25 years to life imprisonment
 Class B: 10 to 25 years imprisonment
 Class B: 1 to 20 years imprisonment some cases, 5 to 20 years
 Class C: 1 to 10 years imprisonment generally
 (some cases, 3 to 10 years)

For an unclassified felony, a term must be imposed in accordance with the sentence specified in the statute which defines the crime.

A special sentencing hearing is provided in cases of capital felonies.

A sentence of imprisonment for life shall mean a fixed sentence of sixty years.

(Chapter 952, §53a-35a)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

Pursuant to legislation effective July 1, 1981, the court sets a fixed term of imprisonment within the broad legislative limits provided for each offense class.

b. Non-incarcerative Alternatives Available

If a fine is imposed for the conviction of a felony, the court must apply the following fine schedule, as provided by statute.

Class A or B felony: an amount not to exceed \$10,000.
Class C or D felony: an amount not to exceed \$5,000.

For an unclassified felony, the court can impose a fine in the amount specified in the statute defining the crime.

Except in cases where a prison term is mandated, the court may order non-incarcerative alternatives, including a fine, probation, restitution, suspended sentence, and/or conditional discharge.

c. Required Sentence Justification(1) All Cases

No provision except in the case of the death penalty, for which the court must set forth its findings as to the existence of aggravating and mitigating circumstances.

(Chapter 952, §53a-41)*

3. Statutory Provisions for Sentence Review

Sentence review is available to those defendants who receive a term of imprisonment of three years or more. Such a review may result in an increase or decrease in the sentence within the limits fixed by law.

All death penalties are reviewed for possible error by the state Supreme Court.

4. Nature of Parole Decision-Making Authority

Prior to July 1, 1981, any offender sentenced to an indeterminate term had to serve the minimum term imposed by the court before being eligible for parole release, and could only serve on parole until the expiration of his maximum term. If parole was revoked the offender could be reincarcerated until the expiration of the maximum term imposed by the court.

Effective July 1, 1981, parole action is abolished. The offender must serve the sentence imposed in full minus any applicable good conduct reductions.

5. Statutory Provisions for Good Time and Other Sentence Reductions

Any person sentenced to a term of imprisonment for an offense committed on or after July 1, 1981 may earn a reduction of his sentence in the amount of ten days for each month served of a sentence up to five years, and twelve days per month served for the sixth and each subsequent year of a sentence which is more than five years.

An inmate who is employed within the institution to which he was sentenced or outside the institution, as permitted by statute, for a period of seven consecutive days may have one day deducted from his sentence for each such period, in addition to any other earned time, at the discretion of the commissioner of correction.

In addition to any other sentence reductions, an inmate may be entitled to receive a meritorious performance award and sentence reduction at the discretion of the commissioner of corrections, for exceptional personal achievement, accomplishment and/or other outstanding meritorious performance. Such a deduction may not exceed one hundred and twenty days from any one continuous term of imprisonment.

In addition, an inmate is entitled to credit for pre-sentence confinement.

(Title 18, §18-7b, §18-98a, b, and d)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

The criminal use of a firearm is a Class D felony. Conviction on such a charge results in a mandatory minimum term of five years which may not be suspended.

b. Habitual or Repeat Offender

Enhancements for three classifications of habitual offenders are defined by statute as follows.

A "persistent dangerous offender" is a person who is convicted of a statutory felony and who has been previously convicted and imprisoned for a statutory felony. Such an offender may be sentenced as a Class A felon for the subsequent offense.

A "persistent serious offender" is a person who is convicted of a felony not enumerated in the statute relating to "persistent dangerous offenders", and who has been previously convicted and imprisoned for a felony. Such an offender may be sentenced as a felon in the next higher offense class.

A "persistent felony offender" is a person who is convicted of a felony other than a Class D felony and who has been twice convicted of a felony other than a Class D felony. Such an offender may be sentenced to the next higher offense class, provided the sentence imposed is not less than three years, and provided that three years of the sentence imposed can not be suspended or reduced by the court.

c. Other

Assault, first degree, is a Class B crime with a five year, non-suspendable minimum term.

If the victim is over 60 years old, the offender will receive a two year mandatory minimum sentence.

Sexual assault with a deadly weapon carries a five year, non-suspendable, mandatory minimum term to be served before the offender can be eligible for parole.

(Chapter 952, §53a et seq.)*

* Connecticut General Statutes, Annotated.

Delaware

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

All sentences of imprisonment must be imposed in terms of a fixed number of years. Felonies are classified by statute into five classes:

- Class A: life imprisonment
- Class B: 3 to 30 years
- Class C: 2 to 20 years
- Class D: 10 years
- Class E: 7 years

A separate hearing is held for determining punishment in the case of First Degree Murder which is sentenceable to death or life imprisonment.

(Title 11, §4201 through §4205)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge sets a definite term of imprisonment in accordance with the penalties prescribed by statute for each offense class. However, the actual release date is determined by the Parole Board, limited only by the definite term imposed by the court which serves as the maximum time an offender must be served. Certain crimes carry a mandatory minimum term which must be imposed upon conviction and served before the offender can become eligible for parole consideration.

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b. Non-incarcerative Alternatives Available

The court may impose a suspended sentence, except in cases where imprisonment is mandated by statute.

c. Required Sentence Justification

(1) All Cases

No provision.

(2) For Deviations Only

No provision. However, if the death penalty is imposed, the jury or judge must set forth findings regarding aggravating and/or mitigating circumstances.

* (Title 11, §4201, §4348, §4208, §4209)

3. Statutory Provisions for Sentence Review

A sentence to death is automatically reviewed by the state Supreme Court to determine if it was arbitrarily imposed and to review the findings supporting the sentence.

(Title 11, §4209)*

4. Nature of Parole Decision-Making Authority

The Board of Parole may release offenders after they have served one-third of their sentence, reduced by good time, unless a mandatory minimum term has been imposed by the court. It is not within the authority of the Parole Board to release an offender prior to expiration of the mandatory minimum term. In all cases, the term of parole cannot exceed the maximum term of the sentence imposed.

The parole term must be at least one year, except where the term expires before one year elapses. The Parole Board has the release decision, limited only by a mandatory minimum, if imposed, which would be required to be served prior to parole consideration.

(Title 11, §4346)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The following good time reductions are provided by statute:

- 1st year of sentence: 5 days per month
- 2nd year of sentence: 7 days per month
- 3rd year of sentence: 9 days per month
- 4th year and succeeding: 10 days per month
- Participation in Rehabilitation program: 5 days per month

(Title 11, §4302 and §4348)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Possession of a firearm during the commission of a felony is a Class B offense. The minimum sentence shall be not less than five years and the offender will not be subject to probation or parole during this time.

b. Habitual or Repeat Offender

The fourth conviction for certain specified felonies results in a sentence of life imprisonment. A 2nd or 3rd conviction for specified 1st and 2nd degree offenses also results in a sentence of life imprisonment, not subject to probation or parole.

c. Other

A conviction for first degree murder results in the imposition of a sentence of death or life imprisonment without benefit of parole or probation.

(Title 11, §4214)*

* Delaware Code Annotated, and 1980 Supplement.

District of Columbia

Indeterminate/Statutory Minimum-Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Upon conviction of a felony, the court must sentence the offender to an indeterminate term, the maximum period not to be in excess of the maximum fixed by law and the minimum period not to be in excess of one-third of the maximum imposed. In certain cases, minimum terms are provided by statute for specific crimes (i.e., robbery - not less than two years). In such cases, the maximum term imposed cannot be less than three years or three times the minimum sentence imposed, and cannot be more than the maximum term fixed by statute.

(Title 16, Section 24-203)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge fixes the minimum-maximum term of imprisonment on the basis of statutorily prescribed limits. The Parole Board determines the actual date of release within the sentence ranges set by the court.

b. Non-incarcerative Alternatives Available

The court may impose a suspended sentence, fine, probation, or any combination of these alternatives, as provided for by statute.

c. Required Sentence Justification

(1) All Cases

All sentences are to be in writing and a certified copy must be furnished to the superintendent of the District of Columbia jail.

(Title 16-710, 23-703)*

3. Statutory Provisions for Sentence Review

Following conviction and sentencing, if the offender feels that the sentence imposed was in violation of the U.S. Constitution or the laws of District of Columbia, or that the court was without jurisdiction to impose the sentence, or that the sentence was in excess of the maximum authorized by law, a motion for relief to vacate, set aside or correct the sentence may be made. Unless the record of the case conclusively shows that the prisoner is entitled to no such relief, the court shall cause notice thereof to be served upon the prosecuting attorney, and grant a hearing on the issues and make appropriate findings.

(Title 23, §110)*

4. Nature of Parole Decision-Making Authority

An offender may be released on parole after serving the minimum sentence or, in the discretion of the Parole Board, may be paroled prior to having served the minimum term.

(Title 24, §204)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Anyone sentenced to a term of imprisonment who has committed no rule infractions shall be entitled to the following deductions from the sentence:

Sentence of greater than one year but less than three years :
six days for each month served.

Sentence of greater than three years but less than five years:
seven days for each month served.

Sentence of greater than five years but less than ten years:
eight days for each month served.

Sentence of ten years or more: ten days for each month served.

When, by reason of training and response to the rehabilitative program of the Department of Corrections, it appears to the Parole Board that there is a reasonable probability that the prisoner will live and remain at liberty without violating the law, and his immediate

release is not incompatible with the welfare of society, but he has not served his minimum sentence, the Board, in its discretion, may apply to the court for a reduction of the minimum term imposed. Offenders convicted of certain crimes, as specified by statute, are ineligible for such reduction.

(Title 24, §201c and §405)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Additional penalties exist for the commission of a crime while armed.

1) For a first conviction of an offense while armed, the offender may be sentenced, in addition to the penalty for the crime committed, to a period of imprisonment which may be up to life; and

2) If convicted more than once, the offender may receive an additional sentence, with the minimum period of imprisonment not to be less than five years and the maximum term not to be less than three times the minimum imposed and may be up to life.

When the maximum term imposed is life imprisonment, the minimum sentence imposed may not exceed fifteen years. Anyone sentenced under this provision may be released on parole at anytime after having served the minimum sentence. Anyone sentenced under this provision may not receive a suspended sentence or be granted probation.

b. Habitual or Repeat Offender

Upon the second conviction for any criminal offense punishable by a fine, imprisonment or both, the offender may be sentenced to pay a fine not exceeding fifty percent greater than the statutorily prescribed fine for the offense, and to suffer imprisonment prescribed for the first offense.

Following any subsequent conviction, the court, in its discretion, may sentence an offender in lieu of any sentence otherwise provided, to any term it deems appropriate, including life imprisonment.

(Title 22, §3202, §104)*

* District of Columbia Annotated Code and 1981 Supplement.

Florida

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Felonies are statutorily divided into five categories:

Capital felonies : life imprisonment, or death penalty
 Life felony: not less than 30 years to life imprisonment
 1st degree: 0 to 30 years to life
 2nd degree: 0 to 15 years
 3rd degree: 0 to 5 years

A separate sentencing hearing is provided in cases involving capital felonies.

(§775.081 through §777.082)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

In imposing sentence, the court is limited only by the legislative prescribed maximum. The Parole Board determines the actual release date at some point before the expiration of the maximum term set by the court.

b. Non-incarcerative Alternatives Available

The court may order restitution, pretrial intervention, a suspended sentence, etc., as specified by statute, if applicable.

c. Required Sentence Justification(1) All Cases

No provision, except in the case of a death penalty in which case the court must set forth in writing its findings upon which the sentence of death is based.

(\$921.18, \$921.15, \$775.083, and \$774.081)*

3. Statutory Provisions for Sentence Review

No provision for appellate review of sentences is made unless a technical violation is noted. In such cases, the sentence may be modified within 60 days by appeal.

(\$921.141)*

4. Nature of Parole Decision-Making Authority

The Parole Board sets the actual release date within the maximum term imposed by the Court. The Parole and Probation Commission has authority to determine the exact term of imprisonment for each offender; however, the offender cannot be imprisoned for a period longer than the maximum term imposed by the court. An offender sentenced to life imprisonment cannot be eligible for parole until he has served 25 years of the sentence.

Parole guidelines have been developed which establish presumptive release dates, based on the seriousness of the offense, the offender's prior history, etc. An offender can appeal a decision regarding his release date within 60 days after the determination is made.

(\$949.01 et seq.)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Good time sentence reductions are granted to every prisoner who is a good worker, behaves well, and abides by the prison rules. Good time reductions are provided by statute as follows:

1st and 2nd years of sentence: 3 days per month
3rd and 4th years of sentence: 6 days per month
5th and succeeding years: 9 days per month

In addition, a one day reduction is made for every one day of productive work, and six days per month are provided for those who can't work, but use their time well. One to six days per month are also granted if no violations have occurred in the past six months.

(\$944.275, \$944.291)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

A three year mandatory minimum becomes part of the sentence which must be served before the offender is eligible for parole or good time credits.

b. Habitual or Repeat Offender

If the offender is convicted of his 3rd offense, the sentence is enhanced by doubling the applicable maximum term.

c. Other

Certain drug offenses carry mandatory minimum terms. A life felony carries a 25 year mandatory minimum term.

(\$775.084 and \$775.087)*

* Florida Statutes, Annotated, 1981 Revision.

Georgia

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The trial judge prescribes a definite determinate sentence for a specific number of years, which is within a minimum - maximum range provided by law for the crime, except in cases of capital felonies where death may be imposed.

(Title 26, §401)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge, limited by the statutorily prescribed minimum-maximum ranges, sets a definite term of imprisonment. The Parole Board sets the actual release date, the term set by the judge becoming the maximum term for which an offender can be imprisoned.

b. Non-incarcerative Alternatives Available

Fine, probation, suspension of sentence, etc., as defined by statute, may be imposed.

c. Required Sentence Justification

(1) All Cases

No provision.

(2) For Deviations Only

No provision.

(Title 26, §104; Title 27, §2502 and §2503; and Title 27, §2529, §2714, and §2723)

3. Statutory Provisions for Sentence Review

In any case in which a sentence of five years or more is imposed by the court, an appeal may be made on the issue of harshness by the defendant before a three judge panel. The sentence may be reduced within 30 days following the appeal, but it may not be suspended or probated.

(Title 27, §2511.1 and §2534.1)*

4. Nature of Parole Decision-Making Authority

The Board of Pardons and Parole determines an offenders actual release date, which is at some point within the maximum term prescribed by the Court.

Most offenders must serve one-third of their sentence to be eligible for automatic initial parole consideration. The Board may decide on parole earlier, but must notify the sentencing judge and the District Attorney and a hearing must be conducted. If parole is revoked, the offender must return to prison to serve the remainder of the sentence.

(Title 77, §516.1 and §525)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Good behavior reductions are provided by statute as follows:

1st year: 1 month
2nd year: 2 months
For each remaining year: 3 months

These sentence reductions do not apply to life sentences.

(Title 77, §320)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

The offender receives an additional sentence of five years for use of a firearm which must run consecutively with the sentence imposed for the felony.

In second offenses, conviction for use of a firearm is punishable by a ten year, non-suspendable sentence which must be served before the offender can be eligible for parole.

b. Habitual or Repeat Offender

A second offender is sentenced to the maximum sentence prescribed for the offense. A fourth offender must serve the maximum term prescribed by law in full and is ineligible for parole.

(Title 26, §9909a and Title 27, §2511)*

* Annotated Code of Georgia, and Criminal Code of Georgia, Title 26, 1978 Revision.

Hawaii

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Felonies are divided by statute into three classes, each carrying a maximum term as follows:

Class A: 20 years
Class B: 10 years
Class C: 5 years

The court imposes a maximum term of incarceration. The Parole Board determines the minimum term and the release date. The court may extend the statutory maximum terms as follows, upon a finding that aggravating circumstances, as defined by state, exist:

Class A: life
Class B: 20 years
Class C: 10 years

(Title 7A, §706-610 through §706-661)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge imposes the legislatively prescribed maximum term and the paroling authority sets the minimum term or actual release date.

b. Non-incarcerative Alternatives Available

Fine, probation, restitution, etc., may be imposed, as provided by statute.

c. Required Sentence Justification

No provision.

(Title 7A, §701-107, §706-605, §706-631, and §706-640)*

3. Statutory Provisions for Sentence Review

The Supreme Court or intermediate appellate court may modify a sentence if it is deemed illegal or excessive.

(Title 7A, §706-606a)*

4. Nature of Parole Decision-Making Authority

The Parole Board determines the minimum term within six months of conviction, on the basis of the offender's history. The parole authority may release an offender from parole when it is deemed safe for him to live in the community. A hearing is held one month before the minimum term expires to determine if parole will be granted; if parole is not granted, a hearing is held every year until the offender is either paroled or has served the maximum term imposed by the court.

A sentence of imprisonment includes a separate parole term, which is not to exceed the maximum term permitted for the offense.

[Title 7A, §706-670 (1-5)]*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Every person convicted of a felony and sentenced to a term other than life who shows good behavior, etc., is eligible for a maximum deduction of ten days per month for time served.

(Title 7A, §706-670 et seq.)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

The use of a firearm results in a mandatory minimum sentence as follows:

Class A: 10 years
Class B: 5 years

This mandatory term must be served in full before the offender is eligible for parole.

b. Habitual or Repeat Offender

Such offenders are sentenced to a mandatory minimum term to be served in full. The sentence is non-suspendable, and offenders are ineligible for parole until the term is served. The mandatory terms for repeat offenders are prescribed by statute as follows:

2nd conviction: 5 years
3rd conviction: 10 years

c. Other

Conviction for murder results in a sentence of life without parole or in a mandatory life term with the possibility of parole after 20 years.

[Title 7A, §706-660 (1), §706-662 (1-2)]*

* Hawaii Revised Statutes, 1976 replacement and 1979 Supplement.

Idaho

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Unless the court uses a non-incarcerative alternative, an offender is sentenced to the custody of the State Board of Corrections for an indeterminate period of time. The court fixes the sentence term at the maximum permitted by statute for each offense, a period of not less than two years.

As an alternative in cases of violent crimes, recent legislation provides that the court, in its discretion, may sentence an offender to a fixed period of years which shall be not less than two years nor more than the maximum term provided by statute. This sentence becomes the mandatory term which an offender must serve before becoming eligible for parole consideration, unless the Parole Board commutes the sentence. (Commutation of a sentence in such cases, although within the authority of the Parole Board, is infrequent.)

(Title 18, §111a and §112)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge sets the sentence term which becomes the maximum amount of time the offender can serve. The actual date of release and the minimum term is decided by the paroling authority.

b. Non-incarcerative Alternatives Available

Fine, probation, suspended sentence, etc., may be imposed if applicable.

c. Required Sentence Justification

No provision.

(Title 19, §2520A et seq.)*

3. Statutory Provisions for Sentence Review

All sentences of death are reviewed by the Supreme Court within ten days.

(Title 19, §2704)*

4. Nature of Parole Decision-Making Authority

The State Board of Corrections supervises parolees and determines when they can be paroled.

Some offenders must serve the mandatory minimum term. Those serving life terms serve ten years before being eligible for parole. Habitual offenders must serve five years or one-third of their sentence, whichever is less, before becoming eligible for parole.

The parolee receives a copy of the conditions for parole. If parole is revoked, the offender receives a revocation hearing.

(Title 20, §223)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The legislature has provided for sentence reductions as follows:

1 to 3 year sentences: 6 days per month
 3 to 5 year sentences: 7 days per month
 5 to 10 years sentences: 8 days per month
 10 years or more: 10 days per month

In addition, up to five days per month is deducted for industrious or meritorious conduct.

(Title 20, §101A)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

A mandatory minimum sentence of at least three years to fifteen years in addition to the sentence for the felony for which the offender is convicted is imposed if the offender was convicted of a previous felony within the past ten years. This provision applies even where the use of a firearm is an element of the offense.

b. Habitual or Repeat Offender

If the offender was convicted of prior felonies listed by statute during the previous ten years, he receives a mandatory minimum term to be served in full without parole eligibility.

(Title 18, §3303 and Title 19, §2514)*

* Idaho Code and Supplement, 1980.

Determinate/Broad Range Discretion

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The judge sets a fixed term of years, based upon legislatively prescribed sentence ranges for each class of offense. Felonies are divided into six classes with statutorily provided permissible sentence ranges as follows:

Murder: 20 to 40 years, or life
 Class X: 6 to 30 years
 Class 1: 4 to 15 years
 Class 2: 3 to 7 years
 Class 3: 2 to 5 years
 Class 4: 1 to 3 years

Factors of aggravation and mitigation are used to increase or decrease the term. If aggravating factors are present, the judge may extend the term as follows:

Murder: 40 to 80 years
 Class X: 30 to 60 years
 Class 1: 15 to 30 years
 Class 2: 7 to 14 years
 Class 3: 5 to 10 years
 Class 4: 3 to 6 years

(Title 38, §1005-1-9 et seq.)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge fixes the sentence term which must be served in full minus good time. For classes 2-4 the range of permissible sentences is significantly less than that prescribed for the other offense classes which involve more severe crimes.

b. Non-incarcerative Alternatives Available

Fine, probation, restitution, etc., as provided by statute, may be imposed in appropriate circumstances.

c. Required Sentence Justification

No specific provision.

(Title 38, §1005-4-1 through §1005-6-2)*

3. Statutory Provisions for Sentence Review

The defendant has a right to appeal in all cases in which the death sentence has been imposed or from sentences in all other classes of felonies. On appeal, the court may reduce, increase, or suspend the sentence or may impose an alternative penalty and imprisonment.

(Title 38, §1005-5-4)*

4. Nature of Parole Decision-Making Authority

Although the Parole Board makes no release decision, it may supervise the offender's release after he has served his term minus good time.

A parole term for an offender convicted of murder is up to three years. For a Class 1 or 2 crime, the parole term is two years. For a Class 3 or 4 crime, the parole term is two years which is added to the term of imprisonment. This parole term is a mandatory supervised release term.

(Title 38, §1005-8-1 et seq.)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

One day reduction can be made for each good day served.

(Title 38, §1003-6-3)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

The use of certain weapons during commission of a felony is a Class X crime.

b. Habitual or Repeat Offender

Such offenders may receive a term of life imprisonment for two or more "forcible" offense convictions, as defined by statute.

(Title 38, §1005-8-2, §17-1, §16-1, §33A-3)*

* Smith Hurd Illinois Annotated Statutes 1972 and Supplement, 1980-81.

Indiana

Determinate/Presumptive Sentencing

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The legislature has established fixed penalties for four felony classes which can be increased or decreased as noted below upon a finding of aggravating or mitigating circumstances:

	<u>Effect of Mitigating Factors</u>	<u>Effect of Aggravating Factors</u>
Class A: 30 years	-10 years	+20 years
Class B: 10 years	-4 years	+10 years
Class C: 5 years	-3 years	+3 years
Class D: 2 years		+2 years

(Title 35, §50-2-4 et seq.)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge has broad discretion to set a fixed term of years which must fall within the broad presumptive ranges established by statute. The offender must serve the sentence imposed in full minus good time.

b. Non-incarcerative Alternatives Available

Fine, probation, and/or suspended sentences may be imposed, as provided by statute.

c. Required Sentence Justification

(1) All Cases

No available data.

(2) For Deviations Only

Deviations from the presumptive sentences upon a finding of aggravating or mitigating circumstances must be explained in writing.

(Title 35, §50-2-4 et seq., §50-2-2, §50-5-2, §50-1A-3)*

3. Statutory Provisions for Sentence Review

The court may reduce or suspend a sentence within 180 days of imposition and following a hearing. The court must, however, state its reasons for the sentence modification in the record.

(Title 35, §50-2-9)*

4. Nature of Parole Decision-Making Authority

An offender is released on parole upon completing the fixed sentence imposed by the court minus good time. Parole cannot exceed a term of one year from date of release.

(Title 11, §13-3-2 et seq.)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

All offenders begin their incarceration in Class One, and are placed in a lower class if they violate correctional rules. They must, however, first be provided with a hearing regarding this reduction of status.

The statutorily prescribed sentence reductions are:

- Class I: 1 day for each day of imprisonment
- Class II: 1 day per two days of imprisonment
- Class III: no good time allotment

(Title 11, §13-3-2 et seq.)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

No specific provisions are made, but use of a "deadly weapon" in the commission of a crime limits the court's discretion regarding alternatives. Probation cannot be imposed if a firearm is used.

b. Habitual or Repeat Offender

Habitual offenders cannot be placed on probation.

Two prior felony convictions result in the addition of 30 years to the presumptive term for the current offense. If ten years have passed since a prior conviction, the additional term can be reduced by up to 25 years.

(Title 35, §23-4.1-18 and §50-2-8)*

* Indiana Annotated Statutes.

Iowa

Partially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The maximum penalties for felonies are prescribed by statute as follows:

- Class A: life without parole
- Class B: term of imprisonment of not more than 25 years
- Class C: term of imprisonment of not more than 10 years and, in addition, a fine of not more than \$5,000.
- Class D: term of imprisonment not more than 5 years and, in addition, a fine of not more than \$1,000.

Where the statute defining the offense declares it to be a felony, but does not state what class of felony it is or does not provide for a specific penalty, the offense is classified a Class D felony.

(Title 902.9 and 701.7)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

Except for a Class A felony, the court shall commit the offender into the custody of the Corrections Department for a term, the maximum length of which shall not exceed the limits fixed by statute nor be less than the minimum term imposed by law, if a minimum sentence is provided for by statute. The term imposed by the judge then becomes the maximum time for which an offender may be imprisoned. The actual release date is at the discretion of the Parole Board.

b. Non-incarcerative Alternatives Available

Following a plea or guilty verdict, the court may suspend sentence and impose a fine or probation or both except in the case of a forcible felony or a habitual offender.

c. Required Sentence Justification(1) All Cases

No provision.

(Title 902.3, 907.3, 909.2, 909.1, 901.5)*

3. Statutory Provisions for Sentence Review

Following the conviction of any person for a felony in any class other than Class A, the court may, within 90 days from the date of conviction, review the sentence and either reaffirm it or substitute for it any sentence permitted by law.

4. Nature of Parole Decision-Making Authority

Any person sentenced to a term of imprisonment is entitled to parole consideration. The Board shall release an offender on parole when, in the Board's opinion, there is reasonable probability such release is without detriment to the community or the individual. Therefore, a person may be required to serve the full term of imprisonment less good time earned unless pardoned or otherwise legally released by the Parole Board.

No person convicted of a Class A felony shall be released on parole unless the governor commutes the sentence to a term of years. The Board shall review a Class A felony within five years of confinement and regularly thereafter if it is of the opinion that such person shall be released on parole. A recommendation is then made to the Governor to commute the sentence to a term of years and eligibility for parole is determined by the Parole Board according to the specific term of years then imposed.

If a person serving a term of imprisonment has previous convictions for forcible felonies, parole shall be denied unless he has served at least one-half of the maximum sentence imposed.

(Title 906, §4 and §5; and Title 246, §38)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Offenders who comply with the rules and regulations of the correctional facility and perform the duties assigned, shall be entitled to a reduction of the term of imprisonment as follows:

1st year: 1 month
 2nd year: 2 months
 3rd year: 3 months
 4th year: 4 months
 5th year: 5 months
 Each subsequent year: 6 months

Anyone working outside the institution or who is a trustee may be granted, with the approval of the staff director, a special reduction at the rate of ten days for each month served in addition to the reduction for good conduct noted above.

(Title 246, §43)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Upon conviction of a felony where the use of a firearm was involved, the offender shall serve a minimum of five years of his sentence before becoming eligible for parole consideration.

b. Habitual or Repeat Offender

An habitual offender is any person convicted of a Class C or Class D felony who has twice before been convicted of a felony. A person sentenced as an habitual offender shall not be eligible for parole until he has served a minimum sentence of three years.

(Title 902, §7 and §8)*

* Iowa Annotated Code and 1981 Supplement.

Kansas

Indeterminate/Statutory Minimum-Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The following sentence classifications are established by statute:

Class A: life imprisonment

Class B: indeterminate; minimum is 5 to 15 years and maximum is 20 years to life.

Class C: indeterminate; minimum is 1 to 5 years and maximum is 10 to 20 years.

Class D: indeterminate; minimum is 1 to 3 years and maximum is 5 to 10 years.

Class E: indeterminate; minimum is 1 year and maximum is 2 to 5 years.

(Title 62-401 et seq.)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge fixes the minimum-maximum term of imprisonment on the basis of statutory limits. The Parole Board determines the actual date of release within the sentence set by the judge.

b. Non-incarcerative Alternatives Available

If the sentence is increased because of prior convictions, the record must contain a statement of each of the prior convictions, and evidence used in support of such findings.

c. Required Sentence Justification

(1) All Cases

All sentences must be recorded in writing, together with the charge filed, the statute applied and the sentence imposed.

(2) For Deviations Only

If the sentence is increased because of prior convictions, the record must contain a statement of each of the prior convictions, and evidence used to support such findings. The court may impose a fine, probation, suspended sentence, and/or special conditions in any combination, as provided by statute.

(Title 60-460, 62, 62-104)*

3. Statutory Provisions for Sentence Review

An appeal to the Supreme Court may be taken by a defendant as a matter of right from any judgment against him.

(Title 62-104)*

4. Nature of Parole Decision-Making Authority

The Kansas Adult Authority has the power to release on parole, those persons who are eligible for parole if they are deemed not to be a threat to the community.

Parole eligibility for crimes committed after January 1, 1979, is as follows:

Inmates shall be eligible for parole after fifteen calendar years of confinement if sentenced to life imprisonment for a Class A felony or, if consecutive sentences are imposed, after serving to 29 years or more.

Any person convicted and sentenced to a term of imprisonment pursuant to the provisions regarding a felony in which a firearm was used shall serve the entire minimum term prior to becoming eligible for parole.

Any person sentenced to a term of imprisonment for a Class B or C felony or sentenced under the habitual criminal provisions shall be eligible for a parole hearing after serving the minimum term imposed by the court, less good time earned.

Any person who has been convicted of a Class A, B, or C felony, by reason of aiding, abetting, or advising another to commit a crime, may be eligible for parole, after serving one-half of the minimum sentence that would be required for the offense without the aiding/abetting provision.

At any time after the expiration of the court's 120 day jurisdiction, any inmate who has been sentenced to a class D or E felony may achieve parole eligibility unless the habitual criminal provisions were imposed. Unless a parole hearing date has already been established, the inmate shall serve the minimum term, less good time credit, prior to a parole hearing.

(Title 62-2226 et seq.)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Credit for good conduct is applied to reduce the minimum and maximum of a term of imprisonment as follows:

Two months for the first year of imprisonment;
Four months for the second year of imprisonment;
Six months for the third and subsequent year(s) of imprisonment.

In addition to the authorized good time credit an inmate may receive meritorious good time credit in increments of no more than 30 days per incident which may be applied to the minimum or maximum term depending on institutional staff recommendations and the approval of the Authority. Meritorious good time shall not apply to the minimum term for persons sentenced for certain crimes specified by statute or for those inmates serving mandatory minimum terms.

(Title 62-2109 and 62-2245)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Any person using a firearm in the commission of a felony shall be sentenced to not less than the minimum sentence prescribed by law for that offense. This sentence is non-suspendable and the offender is ineligible for probation and not eligible for parole until the minimum term is served.

b. Habitual or Repeat Offender

Every person convicted of a second or subsequent felony shall receive an increased penalty.

One prior conviction results in imposition of at least the minimum term and not more than twice the minimum prescribed by law for that offense. The maximum term cannot be less than the lowest maximum term provided by statute and cannot be greater than twice the highest maximum term provided for that offense.

Two or more felony convictions result in the imposition of a sentence which is at least the minimum and no more than three times the highest minimum term provided for that offense. In such cases, the maximum sentence imposed must be at least the maximum term provided by statute and cannot exceed three times the highest maximum provided for that offense.

(Title 62-1516 and 21-107)*

* Kansas Annotated Statutes, 1980 Cumulative Supplement and 1981 Kansas Session Laws.

Kentucky

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Five offense classes, with corresponding sentence ranges, are prescribed by statute:

Capital Offenses: death or tried as Class A offense
 Class A: 20 years to life
 Class B: 10 to 20 years
 Class C: 5 to 10 years
 Class D: 1 to 5 years

The sentence for a felony is determined within the statutory limits noted above.

If the judge, knowing the character of the offender and his history, feels the sentence is unduly harsh, he may modify it within the limits prescribed by law.

(Chapters 532.010 and 532.020)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial jury determines the maximum term of imprisonment. The trial judge may, however, modify a sentence within statutory limits. The paroling authority determines the actual date of release.

b. Non-incarcerative Alternatives Available

Fine, probation, or conditional discharge may be imposed by the court, as provided by statute.

c. Required Sentence Justification

(1) All Cases

No provision.

(2) For Deviations Only

If the death penalty is imposed, the jury must set forth in writing the aggravating circumstances found.

(Chapters 532.050, 532.070, and 532.010 et seq.)*

3. Statutory Provisions for Sentence Review

No specific provision is made, except that, whenever the death penalty is imposed, it shall be reviewed by the supreme court.

* (Chapter 532.025)

4. Nature of Parole Decision-Making Authority

The actual length of imprisonment is determined by the Parole Board. The Parole Board may release any person eligible for parole if the Board deems him no threat to society. The Board may retain a prisoner for at least one year but not beyond the maximum term of imprisonment set by the court. The Board at its discretion may release the offender on final discharge anytime at its discretion within these limits.

(Chapter 439.250 et seq.)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Any person convicted and sentenced to a state penal institution may receive sentence credit at a rate not exceeding ten days per month, which can be forfeited for violation of the rules.

In addition, an inmate may be allowed a deduction of five days per month for performing exceptional or outstanding duties.

(Chapter 197.045)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Any person using a firearm in the commission of a felony is ineligible for probation or other non-incarcerative alternatives and must be imprisoned.

b. Habitual or Repeat Offender

With two prior offenses or more, a person who is subsequently convicted shall be sentenced as follows:

Class A felony:
indeterminate sentence with life as the maximum.

Class B felony:
maximum term of 20 years to life.

Class C or D felony:
maximum term of between 10 and 20 years.

All repeat offenders must serve a minimum term of 10 years before becoming eligible for parole.

c. Other

No available data.

(Chapters 527.010, 533.060, and 532.080)*

* Kentucky Revised Statutes.

Louisiana

Partially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The court sentences an offender to a fixed term of years which is within the minimum-maximum range provided by law for the crime. This sentence becomes the maximum time the offender must serve, with the actual release date being set by the Parole Board.

(Title 30, §879)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

Although certain guidelines exist as an aid to the court in its decision to impose imprisonment or an alternative sentence, the court may set any definite term within the minimum-maximum range set by statute. The Parole Board sets the actual release date.

b. Non-incarcerative Alternatives Available

After conviction in a noncapital felony, the court may suspend imposition or execution of a sentence and in either case, place the defendant on probation for a period which shall be specified and is not less than one year nor more than five years (this provision applies to first convictions only). When a defendant is placed on probation, restitution may also be imposed.

c. Required Sentence Justification(1) All Cases

In all cases in which the death penalty is imposed, a sentencing hearing is held for which the jury must detail the aggravating and mitigating circumstances considered in imposing such a sentence.

(Title 30, §894.1, §893 and §895.1)*

3. Statutory Provisions for Sentence Review

Although no formal review exists, the court may, in its discretion, amend or change the sentence within the limits set by statute prior to execution of the sentence, even though the sentence imposed is legal in every respect.

Following a verdict or plea of guilty in a capital case, the sentence of death may be imposed only after a sentence hearing is held. Such a sentence shall not be imposed unless the jury finds beyond a reasonable doubt that at least one statutory aggravating circumstance exists and, after consideration of any mitigating circumstances, recommends that the sentence of death be imposed. The Supreme Court of Louisiana shall review every sentence of death to determine if it is excessive.

(Title 30, §881 and §905)*

4. Nature of Parole Decision-Making Authority

Anyone who is convicted and sentenced to a term of imprisonment is eligible for parole consideration upon serving one-third of the sentence with the exception of first offenders who if sentenced to less than five years, may be granted parole prior to serving one-third of the sentence.

Any offender sentenced for a crime punishable by life is ineligible for parole until the term of his sentence is commuted to a term of years.

The Parole Board holds hearings at such intervals as it deems necessary and sets the conditions for release.

(Title 15, §574.4)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

When imposing sentence, the court shall give a defendant credit toward service of his sentence for time spent in actual custody prior to sentence imposition.

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

No provision.

b. Habitual or Repeat Offender

Statutes provide that any person who, after having been convicted of a felony, thereafter commits any subsequent felony, upon conviction of the subsequent felony shall be punished as follows:

1) If the second felony is such that, upon first conviction, the offender would be punished by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be a determinate term not less than one-third the longest term and not more than twice the longest term prescribed for a first conviction.

2) If the third felony is such that, upon a first conviction, the offender would be punished by imprisonment for any term less than his natural life then:

a) the person shall be sentenced to imprisonment for any term not less than one-half the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction;

b) if the third felony and each of the two prior felonies involved any crime punishable by imprisonment for more than 12 years, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation or suspension of sentence.

3) If the fourth or subsequent felony is such that, upon a first conviction, the offender would be punished by imprisonment for any term less than his natural life then:

a) the person shall be sentenced to imprisonment for a determinate term not less than the longest prescribed for a first conviction but in no event less than 20 years nor more than his natural life; or

b) if the fourth or subsequent felony and two of the prior felonies involved a violation punishable by death or life imprisonment or imprisonment for more than 12 years the person shall be imprisoned for the remainder of his natural life without parole, probation or suspension of sentence.

The statute indicates that it is the intent of the legislature that an offender need not have been adjudged to be a second offender in a previous prosecution in order to be charged and adjudged to be a third offender; or that an offender need not have been adjudged to be a third offender in a prior prosecution in order to be convicted as a fourth offender in a prosecution for a subsequent crime.

This provision is not applicable in cases where more than five years have elapsed since the expiration of the maximum sentence for the previous conviction(s) and the time of the commission of the last felony for which the offender has been convicted.

(Title 15, §529.1)*

* West's Louisiana Statutes Annotated and 1981 Supplement.

Maine

Broad Range Discretion

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Offenses are divided into five classes, with a sixth class for murder, which carry the following maximum penalties:

Murder: 25 years to life
 Class A: 20 years
 Class B: 10 years
 Class C: 5 years
 Class D: 1 year
 Class E: 6 months

When sentencing, the judge sets a fixed term of years to be served in full minus good time, not to exceed the legislative maximum.

(Title 17A)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge, limited only by the legislatively set maximum term for each class, sets a fixed, definite term to be served in full minus good time. The parole authority has been abolished.

b. Non-incarcerative Alternatives Available

Probation, sentence, fine, or their various combinations can be imposed by the court as provided by statute.

c. Required Sentence Justification

No provision.

(Title 17A)*

3. Statutory Provisions for Sentence Review

For every sentence greater than one year, the offender has the right to direct review by a panel of three trial court judges. The objective of this review is to determine whether or not a particular sentence is disparate from other sentences which are similar in terms of the character of the offender and the nature of the offense. This is a separate proceeding from the normal appeal process.

In addition to the aforementioned review, the offender may institute proceedings for Post Conviction Review. These proceedings represent a collateral attack on the sentence imposed. Rather than determining the disparity of a particular sentence, these proceedings focus on the constitutionality of the sentence imposed.

Furthermore, at any time following an offender's entry into the prison system, the prison administration has the authority to review the sentence if it is of the opinion that such a sentence is inappropriate. This avenue of review, however, is seldom employed by the prison administration and is currently subject to challenge on constitutionality grounds.

(Title 15, §305A, and §2141 through §2144, and Title 17, §1154)*

4. Nature of Parole Decision-Making Authority

Parole has been abolished in Maine. Offenders are released unconditionally at the end of their sentence minus good time.

(Title 17A)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Good time is earned at the rate of ten days per month, with two days per month added for an offender's work and other duties while incarcerated.

(Title 17A)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

If a Class B, C, D, or E offense is committed with the use of a firearm, the sentencing class is one class higher. Minimum terms are specified by statutes for Classes A, B, C and D if the offense is committed with a firearm, and these terms are non-suspendable.

b. Habitual or Repeat Offender

No specific provision.

c. Other

Murder is sentenceable from 25 years to life, during which time the offender is not eligible for probation.

(Title 17A)*

* Maine Criminal Code.

Maryland

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Article 27 of the Maryland Code sets out the maximum penalty for each of the statutory offenses described. The court has discretion to sentence the offender to a definite term of years which does not exceed the statutory maximum term provided for the offense. For those offenses for which a minimum-maximum sentence range is statutorily provided, the court may set the penalty below the statutory minimum, unless the statute provides that the minimum term is mandatory. The court may not, however, set the penalty to exceed the maximum term set by statute unless the habitual offender statutes apply. The sentence imposed by the court becomes the maximum time for which an offender may be incarcerated and the actual release date, which is set by the Parole Board, may be any time prior to the expiration of this term.

(Article 27)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

In imposing sentence, each statutory offense is sentenceable to a maximum term prescribed by statute. The court has discretion to set a fixed term of years up to the statutorily provided maximum. For those offenses for which a minimum-maximum sentence range is statutorily provided, the court may set the penalty below the statutory minimum unless the statute provides that the minimum term is mandatory.

In cases where the penalty is either death or life imprisonment, the court shall consider the aggravating and mitigating circumstances which were present in the commission of the felony prior to imposing sentence and a separate sentencing hearing shall be held. Upon conviction for first degree murder, the defendant has the option of being sentenced by either the judge or the jury.

b. Non-incarcerative Alternatives Available

The court may, in its discretion, order fine and/or imprisonment, or suspend sentence, as provided by statute.

c. Required Sentence Justification

(1) All Cases

The conclusions of the trial court must be sufficiently definite; however, the court need not give reasons for the verdict or make special findings of fact. The court may render its verdict without comment, or it may state in open court or by written memorandum the grounds for its decision.

(Article 27, §641 and §643)*

3. Statutory Provisions for Sentence Review

A person who is convicted of a crime and sentenced to serve, with or without suspension, a total of more than two years imprisonment, shall be entitled to have the sentence reviewed by a panel of three or more judges of the judicial circuit in which the sentence was imposed. A judge may not sit on a review hearing for a sentence upon which he conferred except in an advisory capacity. The decision shall be rendered by a majority vote within 30 days from the date of filing.

Whenever the death penalty is imposed and the judgment becomes final, the Court of Appeals shall review the sentence on the record according to criteria specified by statute. The court may, in its discretion, affirm the sentence, set aside the sentence and remand the case for the conduct of a new sentencing proceeding, or set aside the death sentence and remand for modification of the sentence to life imprisonment.

(Article 27, §645JA and §414)*

4. Nature of Parole Decision-Making Authority

The Parole Board, on its own initiative, can make an investigation as to the advisability of parole whenever a prisoner has served one-fifth of the term or consecutive terms. However, the Board has the power to release an offender prior to the service of one-fifth of the term if there is reasonable probability to believe that the individual is not a threat to the community or to himself.

Any person sentenced to life becomes eligible for parole after serving 15 years of the term minus statutorily provided sentence reductions.

Certain mandatory sentences provided by statute for specific crimes place further restrictions on parole eligibility.

(Article 41, §122)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The following sentence reductions are provided by statute:

Good conduct: five days for each month served

Meritorious conduct: an additional five days for each month served.

For satisfactory progress in special and selected work projects or any other special program, an additional deduction, not to exceed five days for each month served, can be made.

Anyone sentenced and convicted shall receive credit against his term for the time spent in custody prior to conviction of the offense.

(Article 27, §638C and §700)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

The unlawful use of a handgun in the commission of a felony carries an additional sentence. Any person so convicted shall be guilty of a separate offense and shall be sentenced to a term of imprisonment of not less than five nor more than 15 years.

b. Habitual or Repeat Offender

Any person who has served three separate terms of confinement in a correctional institution as a result of three separate convictions of any crime of violence, as defined by statute, shall be sentenced, on being convicted a fourth time of a crime of violence, to life imprisonment without the possibility of parole.

Any person who has been convicted on two separate occasions of a crime of violence where the conviction did not arise from a single incident and has served at least one term of confinement in a correctional institution as a result of a conviction of a crime of violence, shall be sentenced, on being convicted a third time of a crime of violence, to imprisonment for the term allowed by law but, in any event, to not less than 25 years, which cannot be suspended and under which the offender cannot be eligible for parole.

c. Other

Anyone convicted in any state of a violation of the narcotics laws shall be, on the second or subsequent conviction, punished by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both. Such an offender shall be eligible for parole either after having served one-fifth of the term or, prior to serving one-fifth of the term, at the discretion of the Parole Board.

(Article 27, §36B, §643B, and §293)*

* Maryland Annotated Code and 1981 Supplement.

Massachusetts

Indeterminate/Statutory Minimum-Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Except in the case of a life sentence or conviction as a habitual criminal, the court shall not fix the term of imprisonment, but shall fix a maximum and a minimum term for which the offender can be imprisoned. The maximum term shall be no longer than the longest term fixed by law, and the minimum shall be not less than two and one-half years.

(Chapter 274:1 et seq.)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge imposes an indefinite term of imprisonment within the limits prescribed by law. The Parole Board computes the actual date of release on the basis of the offender's conduct and other factors.

b. Non-incarcerative Alternatives Available

The court can suspend sentence and/or impose a split sentence, weekend confinement, fine and/or probation, as provided by statute.

c. Required Sentence Justification

(1) All Cases

No provision.

(2) For Deviations Only

If capital punishment is imposed, the court must find the existence of aggravating circumstances.

(Chapter 279:30, 279:31, and 279:54)*

3. Statutory Provisions for Sentence Review

Whenever the death penalty is imposed, the sentence shall be reviewed in the supreme judicial court.

(Chapter 279:55)*

4. Nature of Parole Decision-Making Authority

Generally, a violent offender must serve two-thirds of his minimum sentence to be eligible for parole.

Nonviolent offenders must serve one-third of their minimum term or at least one year before becoming eligible for parole. For certain crimes defined by statute, the offender must serve at least two years before becoming eligible for parole. However, certain exceptions to these provisions are established by statute.

In all cases deductions can reduce the minimum or maximum time to be served and the time an offender must serve before becoming eligible for parole.

For offenders serving life terms for crimes other than murder in the first or second degree, the Parole Board grants a hearing after 15 years of the sentence has been served to determine parole eligibility.

The Parole Board may revoke parole and recommit the offender. Time on parole is considered part of the original sentence and the offender remains on parole until expiration of the sentence. However, the Parole Board has the authority to release an individual from its supervision before the sentence expires.

(Chapter 127:133)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The following sentence reductions are provided by statute:

Sentence of four months to 364 days: 2.5 days per month
 Sentence of one to two years: 5 days per month for good conduct
 Sentence of two to three years: 7.5 days per month.
 Sentence of three to four years: 10 days per month.
 Sentence of four or more years: 12.5 days per month.
 Donation of one pint of blood: 10 days.
 Confinement in a prison camp: 2.5 days per month

Participation in special programs (work, educational, etc.) within or outside the institution yield an additional seven and one-half days reduction for every month served. Certain offenders, however (sex offenders and those serving life terms), are exempt from these reductions unless, in the case of an offender serving a life term, the Governor commutes the sentence to a term of years.

If the offender violates prison rules, he may forfeit all or part of his good conduct credit. In addition, if the offender commits certain specified while incarcerated, forfeiture of good time credit is mandatory.

(Chapter 127:129 and Chapter 127:129A)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Whoever has in his possession a deadly weapon, including a firearm, during the commission or attempted commission of a felony, shall be punished by an additional term of two and one-half years to five years, which is non-suspendable. Even with good time reduction, the offender must serve at least one year of the sentence.

b. Habitual or Repeat Offender

Any offender convicted of two or more crimes and sentenced to prison for terms of not less than three years each, shall upon conviction of a new offense be sentenced for the maximum term provided by law as a penalty for the felony for which he is convicted.

(Chapter 265:18B and Chapter 278:11A)*

* Annotated Laws of Massachusetts, 1972 and 1981 Supplement.

Michigan

Indeterminate/Mandatory Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The court shall impose a minimum term and the maximum penalty provided by law shall be the maximum sentence in all cases except as otherwise provided by statute. If the sentence is life imprisonment, no minimum shall be imposed.

(Title 28, §196 and §197)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The court sets the minimum term and imposes a maximum term prescribed by law, leaving the actual date of release to the Parole Board.

b. Non-incarcerative Alternatives Available

Fine and/or probation can be imposed under various conditions.

c. Required Sentence Justification

No provisions.

(Title 28, §1080 and §1403)*

3. Statutory Provisions for Sentence Review

Only sentences which exceed statutory provisions are reviewed by the appellate court. The appellate court has no supervisory control over a sentence that is within the statute.

(Title 28, §2303)*

4. Nature of Parole Decision-Making Authority

An offender can be eligible for parole after serving the minimum term, minus good-time, except where the minimum term must be served in full. The offender is not released until certain conditions, such as finding employment, etc., are met. These conditions are defined by statute.

The time spent on parole is discretionary with the Parole Board.

(Title 28, §2303)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

By statute, the following sentence reductions are provided:

1st and 2nd years of sentence: 5 days per month;
 3rd and 4th years of sentence: 6 days per month;
 5th and 6th years of sentence: 7 days per month;
 7th, 8th, and 9th years of sentence: 9 days per month;
 10th to 14th years of sentence: 10 days per month;
 15th to 19th years of sentence: 12 days per month; and
 20 years of sentence and up: 15 days per month.

The Parole Board determines the amount of time to be forfeited for a rule violation.

(Title 28, §1403)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

In the case of armed robbery, a two year mandatory minimum term of imprisonment must be imposed.

Carrying a firearm or dangerous weapon with unlawful intent carries a penalty of up to five years imprisonment.

b. Habitual or Repeat Offender

In the case of a second conviction, the court may impose a maximum term that is not more than one and one-half times the longest term prescribed for a first conviction for that offense. The court shall still fix the minimum-maximum terms within the statutorily prescribed limits and the sentence imposed shall be an indeterminate one.

In the case of two or more felonies, the court shall impose a maximum sentence of not more than twice the longest term prescribed by law for a first conviction.

If the offender has had three or more felony convictions, the judge may impose a life sentence or a lesser term if the maximum term for a first conviction is more than five years. If the maximum term is less than five years, the court may impose a term of 15 years or less. These offenders shall be ineligible for parole until the minimum term is served.

(Title 28, §1082 through 1085)*

* Michigan Statutes Annotated, Volumes 24-24A, 25-25A.

Minnesota

Determinate/Sentencing Guidelines

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The court in sentencing shall consider guidelines adopted by the Sentencing Commission in determining the appropriate sentence for an offense. The guidelines shall specify circumstances where imprisonment is proper and provide a fixed presumptive sentence, together with a narrow range (plus or minus five to seven percent) around the fixed presumptive sentence. If the court deviates from the presumptive sentence, the judge is required to make written findings of fact regarding the departure.

Sentencing for First Degree Murder is excluded by law from the guidelines and continues to have a mandatory life sentence.

(Chapter 244)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge sets a fixed term of imprisonment on the basis of the sentencing guidelines. This term must be served in full minus good time.

b. Non-incarcerative Alternatives Available

When the guidelines recommend a stay of execution or imposition of sentence, the Court has total discretion to impose such sanctions as fine, restitution, and/or confinement for up to one year in the local jail or workhouse as a condition of promotion.

c. Required Sentence Justification

(1) All Cases

No provision.

(2) For Deviations Only

If the court deviates from the presumptive sentence, the judge is required to make written findings of fact regarding the departure.

3. Statutory Provisions for Sentence Review

Appeal to the Supreme Court for any sentence imposed or stayed may be brought by the defendant or the State. The Supreme Court may review the sentence to determine whether the sentence is inconsistent with the law, unreasonable, inappropriate, excessive, disparate or not warranted, based on the findings of fact.

4. Nature of Parole Decision-Making Authority

For cases sentenced under the guidelines, the Minnesota Corrections Board will no longer have power to discharge a sentence before expiration. Thus, the sentence imposed minus good time earned equals the term of imprisonment. Those offenders serving a life sentence for murder with no previous felony convictions shall become eligible for parole after serving 20 years, less the diminution which would have been allowed for good conduct had the sentence been for 20 years. Those serving a life sentence for murder with a previous felony conviction must serve 25 years less the diminution which would have been allowed for good conduct had the sentence been for 25 years before being eligible for parole. Those serving the mandatory sentence of life for 1st Degree Murder become eligible for parole after having served 25 years and upon an unanimous affirmative vote of the Parole Board.

(Title 243, §5)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Credit for good conduct is earned at a rate of one day for every two days served. Good time reductions determine the period of supervised release to be served by the inmate. Good time earned prior to disciplinary violations cannot be forfeited, but the inmate may be required to serve an additional portion of his term after the violation without earning good time. Additional time served cannot result in a loss of more than 90 days good time, unless the offender is serving a mandatory life sentence.

(Title 243, §18, and Title 244, §4)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Any commitment following conviction of an offense involving use of any dangerous weapon other than a firearm or the possession of a firearm shall be for a term no less than one year plus one day nor more than the maximum provided by law. Any conviction for the above mentioned charge for the second or subsequent conviction shall be for a term of not less than three years, nor more than the maximum fixed by law.

If the offense involves use of a firearm, the first conviction for such an offense shall carry a minimum term of not less than three years and the second or subsequent offense shall carry a minimum term of not less than five years.

Any defendant convicted and sentenced as required by this section shall not be eligible for probation, parole, discharge or supervised release until serving the full mandatory minimum term of imprisonment as provided by law.

The guidelines provide a fixed presumptive sentence for such statutory minimums, i.e., a three year minimum carries a fixed presumptive sentence of either 54 months or the time provided in the appropriate cell of the "grid" as defined by the severity of the offense and the offenders criminal history, whichever is longer.

b. Habitual or Repeat Offender

Prior felony convictions for certain sex offenses occurring within 15 years of the present offense will result in a prison term of not less than three years or more than the maximum sentence provided by statute for the present offense.

(Title 609, §11 and §346)*

* Minnesota Statutes Annotated and 1981 Supplement.

MississippiPartially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Penalties are defined by statute for each offense rather than by classes of offense, with a maximum prescribed for each.

In the case of capital offenses, the jury determines the punishment in a separate sentencing proceeding in which aggravating and mitigating factors are considered.

For all other felony offenses, the trial court sets a maximum term within the penalty prescribed by law for the offense, leaving the actual date of release to the parole board (e.g., in the case of robbery the penalty prescribed by law is not to exceed 15 years, the judge may sentence the offender to up to 15 years). Penalties are defined by statute for each offense rather than by classes of offenses, with a maximum prescribed for each.

(Title 91 through 99)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

In all but the capital cases the trial judge sets a fixed, single term of years, up to the maximum prescribed by law, which becomes the maximum term which the offender must serve.

b. Non-incarcerative Alternatives Available

Fine, probation, and/or suspended sentence may be imposed if permitted by state.

c. Required Sentence Justification

(1) All Cases

No available data.

(2) For Deviations Only

If the jury imposes a death penalty, the sentence must be supported by specific written findings of fact pertaining to the existence of aggravating and mitigating circumstances.

(Title 91 through 99)*

3. Statutory Provisions for Sentence Review

A death sentence is subject to automatic review by the Supreme State Court within sixty days.

(Title 91 through 99)*

4. Nature of Parole Decision-Making Authority

The Parole Board shall consider all offenders for parole eligibility one year after admission to the state correctional facility except those offenders sentenced to death. The Board sets up the conditions for revocation.

A parolee who violates the parole conditions may be reincarcerated for the remainder of original sentence or may, after a time, be regranted parole.

(Title 91 through 99)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The following sentence reductions are provided by statute:

- 3 days per month for 1st year of sentence;
- 4 days per month for 2nd year of sentence;
- 5 days per month for 3rd year of sentence;
- 6 days per month for 4th year of sentence;
- 7 days per month for 5th year of sentence;
- 8 days per month for 6th year of sentence;
- 9 days per month for 7th year of sentence;
- 10 days per month for 8th year of sentence;
- 11 days per month for 9th year of sentence; and
- 15 days per month for 10th and succeeding years.

The superintendent may award additional credit, not to exceed thirty days per year.

(Title 91 through 99)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

There is no specific sentencing provision relating to the use of a firearm in the commission of a felony. However, a person who is guilty of aggravated assault and/or attempt to commit serious bodily injury to another with a deadly weapon, shall be sentenced to not more than 20 years in prison.

Robbery with the use of a deadly weapon results in a three year minimum term of imprisonment.

b. Habitual or Repeat Offender

Every person convicted of two prior felonies and now convicted of a third felony, shall be sentenced to the maximum term prescribed for such felony. This sentence cannot be reduced or suspended, and the offender is not eligible for probation or parole. If either one of the prior felonies was a violent crime, the offender shall be sentenced to life imprisonment.

(Title 91 through 99)*

* Mississippi Code 1972 Annotated and 1980 Supplement

Missouri

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The authorized terms of imprisonment, including both prison and conditional release, are:

- Class A : 10 to 30 years or life imprisonment
- Class B : 5 to 15 years
- Class C : not to exceed 7 years
- Class D : not to exceed 5 years

The conditional release term shall be:

- a. one-third for terms of nine years or less
- b. three years for nine to 15 year terms
- c. five years for terms of 15 years or more

The court fixes a maximum term within the range provided by law.

(Title 40-41)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The jury assesses punishment and decides the extent and duration of the sentence or other disposition unless the defendant asks that the court assess punishment or the jury cannot agree on the sentence. If the jury assesses punishment not authorized by law, the judge shall declare punishment. The term set becomes the maximum period for which the offender can be held before conditional release, but the Parole Board may order release before the maximum is served.

b. Non-incarcerative Alternatives Available

No available information.

c. Required Sentence Justification

No provision.

(Title 38-39 and 40-41)*

3. Statutory Provisions for Sentence Review

If the jury assesses punishment not authorized by law, the judge shall determine the appropriate punishment.

(Title 38-39)*

4. Nature of Parole Decision-Making Authority

No offender serving time shall be paroled until he has served at least one-half of his full term.

Those offenders labelled as "nondangerous" can be paroled after serving one-fourth of their sentence.

No convict serving a life term may be paroled until he has served 30 years.

No offender shall serve more than 2/3 of his sentence. Offenders are only released if the board feels they are no threat to society. The offenders have a right to be heard when considered for parole, and, when released, are on parole until the expiration of the maximum term (less good-time), for which they are sentenced unless discharged before.

(Title 38-39)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Good time provisions were abolished after 1979.

(Title 38-39)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Any person using a "dangerous weapon" in the commission of a felony shall be punished to a term of imprisonment of not less than two years or more than ten years, in addition to the sentence for the commission of the felony.

Two prior convictions result in a 4 to 20 year sentence in addition to that imposed for the original felony. The minimum sentences prescribed cannot be deferred or suspended.

b. Habitual or Repeat Offender

A persistent offender, with one previous felony conviction in past five years, shall be imprisoned for at least five and not more than 100 years. The five year minimum may not be deferred or suspended.

(Title 40-41)*

* Vernon's Annotated Missouri Statutes and Supplement, 1981.

Montana

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Penalties are specified by statute for each offense, and generally provide the maximum term which may be imposed for each offense. The court sentences the offender to a fixed term of years within this limit. The term imposed becomes the maximum amount of time the offender will serve.

(Title 46, §18.201 et seq.)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The court sets a maximum term for incarceration on the basis of the limits specified by statute for each offense. The Parole Board determines the actual date of release.

b. Non-incarcerative Alternatives Available

The court can impose probation, fine, and/or restitution, as provided by statute.

c. Required Sentence Justification(1) All Cases

Although not required by statute, the Montana Supreme Court requires judges to state in writing the reasons for the sentence imposed.

(2) For Deviations Only

If a mandatory minimum is prescribed by statute for the offense, the judge must state his reasons in writing to support the sentence imposed.

In all cases in which the death penalty is imposed, the court's determination must be supported by specific written findings.

(Title 46, §18-601 and §28)*

3. Statutory Provisions for Sentence Review

The death sentence is subject to automatic review.

In addition, the Supreme Court of Montana appoints three district court judges to act as a review division for reviewing sentences. Any person sentenced to one year or more may apply for review within sixty days from sentence imposition. Such review may result in an increase or decrease of the sentence within the limits fixed by law.

(Title 46, §18-310)*

4. Nature of Parole Decision-Making Authority

The sentencing court shall designate an offender as either "non-dangerous" or "dangerous" for the purposes of parole eligibility. If an offender is designated as "non-dangerous," he is eligible to make application for parole after serving one-third of his sentence, or one year. Parole may be granted before the minimum term is served.

However, if the offender is designated as "dangerous" at the time of sentencing, he is not eligible for parole consideration until he has served at least one-half of his term of sentence.

(Title 53, §30 et seq.)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

By law, good conduct reductions are provided as follows:

10 days per month for inmates assigned to maximum, close, and medium I security classifications.

13 days per month for those classified as medium II and minimum security classification.

15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of one year.

13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole.

3 days per month for those inmates participating in self-improvement activities designated by the department.

(Title 53, §30-105)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Any person found guilty of any offense and who, while engaged in the commission of the offense, uses a dangerous weapon in any manner, shall, in addition to the punishment for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years.

A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment of not less than 4 years or more than 20 years.

The imposition of the minimum sentence prescribed by this section may not be deferred or suspended.

An additional sentence prescribed by this section shall run consecutively with the sentence provided for the offense.

Exceptions to this provision are provided for by statute if the offender, at the time of committing the offense, was under 18 years of age, or if his mental capacity was significantly impaired, or if he was acting under unusual and substantial duress, or if the offender was an accomplice with minor participation, or if no serious bodily injury was inflicted on the victim

A hearing is held to determine the application of exceptions.

b. Habitual or Repeat Offender

Unless exempted by statute, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both, if he was 21 years of age or older at the time of the commission of the present offense.

If the offender was a persistent felony offender, as defined by statute, at the time of his previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed \$50,000, or both.

Except as provided by statute, the imposition of the first 5 years of a sentence imposed under paragraph (1), or the first 10 years of a sentence imposed under paragraph (2), may not be deferred or suspended.

Any sentence imposed under this section shall run consecutive to any other sentence imposed.

(Title 46, §18-221 and §18-501 through §18-503)*

* Montana Annotated Code, 1979.

Nebraska

Statutory Minimum-Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

A minimum-maximum sentence range for each offense is provided by statute. Within this range, the court sets either the minimum and maximum period of incarceration, or simply the maximum term, thereby allowing the statutorily prescribed minimum term to apply.

* (Chapters 27-30)

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

Except where a life sentence is required, the court imposes an indeterminate sentence. The minimum term may not be less than that prescribed by statute or more than one-third of the maximum imposed. The court may, in its discretion, set only a maximum term in which case the minimum term automatically becomes that prescribed by statute.

The Nebraska District Court Judges Association, by statute, must develop and implement uniform criteria for sentencing criminals.

The Parole Board sets the actual release date at some point before the maximum term imposed by the court expires.

b. Non-incarcerative Alternatives Available

The court can impose a fine, probation, and/or suspended sentence, as provided by statute.

c. Required Sentence Justification(1) All Cases

In each case in which the court imposes a death sentence, the determination must be in writing and supported by findings of fact concerning aggravating and mitigating circumstances.

(Chapters 27-30)*

3. Statutory Provisions for Sentence Review

The Supreme Court may reduce a sentence when, in its opinion, it is excessive. Unless an abuse of discretion has occurred, a sentence within statutory limits will not be disturbed.

The death penalty is automatically reviewed by the state Supreme Court.

(Chapters 27-30)*

4. Nature of Parole Decision-Making Authority

The Board of Parole determines the time of release of parole of convicted offenders, stating conditions, terms of revocation, etc.

Every offender shall be eligible for parole at the expiration of his minimum term minus good time. Each offender shall have a hearing before the Board within sixty days of the time at which his minimum term will expire to determine if he will be released. If he is not released, he is granted a hearing once a year thereafter until a release date is fixed.

If parole is revoked, the offender may serve the remainder of his maximum term in prison.

(Chapters 27-30)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The following good term reductions are provided by statute:

- 2 months for 1st year of sentence;
- 2 months for 2nd year of sentence;
- 3 months for 3rd year of sentence; and
- 4 months for each succeeding year.

These reductions shall be deducted from the minimum term to determine the date on which the offender is eligible for parole and shall be deducted from the maximum term to determine the mandatory discharge date for the offender.

In addition, an offender shall receive a further reduction of five days per month for faithful performance of assigned duties. Such reductions can be forfeited for a rules violation.

(Chapters 27-30)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Any person using a firearm in the commission of a felony is guilty of a separate offense and shall be imprisoned for three to ten years, to be served consecutively with any other sentence imposed on him.

b. Habitual or Repeat Offender

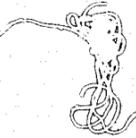
Whoever has been convicted twice of felony crimes shall be deemed a habitual criminal and sentenced to imprisonment for ten to 60 years, unless a greater punishment is provided by statute. In such cases, the greater punishment shall apply.

(Chapters 27-30)*

* Revised Statutes of Nebraska, 1943, and Cumulative Supplement 1980.

Nevada

Partially Indeterminate



1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Every person convicted of a felony for which there is a statutorily prescribed term of imprisonment shall be sentenced to a definite term of imprisonment within the limits prescribed by statute.

For a felony for which no penalty is specified by statute, the definite term shall be not less than one year nor more than six years.

In case of murder, there will be a separate sentencing hearing to determine if the death penalty shall be imposed.

(Title 16)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge imposes a fixed term of incarceration, within the limits prescribed by statute. The Parole Board determines the actual date of release within the sentence imposed by the court.

b. Non-incarcerative Alternatives Available

The court may impose a fine, probation, etc, if permitted by statute.

c. Required Sentence Justification

In applying the death penalty the jury shall enter into writing its findings of aggravating circumstances.

(Title 14 and 16)*

3. Statutory Provisions for Sentence Review

A defendant is entitled to mandatory review by the Supreme Court of a death sentence.

(Title 14)*

4. Nature of Parole Decision-Making Authority

A prisoner can be released on parole after serving one-third of his sentence or when he has served one year whichever is longer.

Any person convicted of a felony is subject to the jurisdiction of the Parole Board from the time of release on parole until the expiration of his sentence, less good time.

(Title 14)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The following sentence reductions are provided by law:

Two months for each of the first two years;
Four months for each of the next two years;
Five months for each of the remaining years.

The Board may grant credit for "diligence in labor", "study merits", or blood donations. These credits can be forfeited for rule violations.

In cases where an offender is serving a sentence for sexual assault, the term of sentence is not subject to reductions for good conduct.

(Title 14)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Any person convicted of the use of a firearm in the commission of a felony shall be punished to a term equal to and in addition to the term of imprisonment prescribed by statute for such a felony. These sentences shall run consecutively. This provision does not apply where the use of a firearm is an element of the felony.

The court shall not suspend sentence or grant probation to such violators.

b. Habitual or Repeat Offender

Conviction of two previous felonies results in a term of imprisonment of 10 to 20 years.

Conviction of three previous felonies results in a term of life imprisonment, either with or without parole. If parole is allowed, eligibility occurs after ten years has been served.

c. Other

An additional penalty is imposed when certain crimes, specified by statute, are committed against a person 65 years of age or older.

(Title 16)*

* Nevada Revised Statutes, 1979, Volumes 7 and 8.

New Hampshire

Indeterminate/Statutory Minimum-Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The court shall fix the maximum and minimum according to the following statutory provisions:

- 1st degree murder: mandatory life imprisonment;
- 2nd degree murder: maximum term not to exceed life imprisonment and minimum term is such as the court may order;
- Class A felony: maximum term not to exceed 15 years and minimum term not to exceed one-half the maximum imposed;
- Class B felony: maximum term not to exceed 7 years and the minimum term not to exceed one-half the maximum imposed;
- Attempted murder: maximum term not to exceed 30 years and minimum term as the court may impose.

*(Title 651.2)

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

A person convicted of a felony may be sentenced to prison, probation, conditional discharge, fine, or restitution in the discretion of the court and according to terms of eligibility as defined by statute.

If the court imposes a term of imprisonment, it has the discretion to set any minimum-maximum term within the limits fixed by statute.

In felony cases, there is no sentencing prior to the presentence investigation unless such is waived by the defendant and the state.

b. Non-incarcerative Alternatives Available

Alternatives to imprisonment are available as follows:

Probation: for a period not to exceed five years;

Fine: amount not to exceed \$2,000;

Conditional Discharge: period not to exceed 3 years subject to restrictions as the court may deem appropriate;

Restitution: according to the terms set by the court.

The court may impose any of these alternatives in any combination in lieu of a sentence to prison.

c. Required Sentence Justification

(1) All Cases

Unless requested by the Review Division (see #3 below), the judge need not prepare a sentencing report detailing his reasons for imposing sentence. If the Review Division requests such a report, the sentencing judge shall comply within 7 days.

(Title 651.58)*

3. Statutory Provisions for Sentence Review

Anyone sentenced to a term of imprisonment greater than one year (except in any case in which a different sentence could not have been imposed) may file with the clerk of the Superior Court for review.

A board of three members is appointed by the Superior Court to act as a Review Division of the Court. Such a review may result in a decrease or an increase of the minimum or maximum term within the limits fixed by law. The decision of two members is sufficient to determine a matter, and no member may sit or act on a review of a sentence which he imposed.

(Title 651.58)*

4. Nature of Parole Decision-Making Authority

Offenders may be released following the expiration of the minimum term, minus any good conduct or other credits, provided the parole board feels there is reasonable probability that no further violations of the law will occur.

Anyone serving life may be given a life "permit" after having served 18 years minus sentence reduction credits. Anyone serving life for murder in the 1st degree is ineligible for parole until serving 40 years minus credits and following a recommendation by the Superior Court for release.

In special cases of meritorious conduct, an offender may be issued a permit and discharged when he has served two-thirds of the minimum term of sentence.

(Title 651.45, and 651.18)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The following good conduct reductions are provided by statute:

90 days for each full year of the minimum term of sentence served;

Five additional days for each month of meritorious service against the maximum and minimum sentence.

In addition to good conduct reductions, a deduction of five days is made against the maximum and minimum term for each donation of blood to blood banks, non-profit hospitals, etc.

(Title 651.55a,b)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Anyone convicted of the felonious use of a firearm shall be given a mandatory sentence exclusive of any other sentence imposed for conviction of the felony which was committed when the person was so armed. This sentence shall not be suspended in whole or in part and the offender is without benefit of parole or probation.

b. Habitual or Repeat Offender

Provided that an offender is older than 21, the court upon consideration of the circumstances of the crime for which said offender has been convicted, or on the basis of a psychiatric exam, or if the offender has twice previously been imprisoned in excess of one year; may sentence such an offender to an extended term for any felony other than murder, the minimum of which cannot be more than ten years and the maximum cannot exceed 30 years.

(Title 651.6 and 630, IIb)*

* New Hampshire Annotated Code and 1981 Supplement.

New JerseyPartially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Offenses are divided into four degrees with the following presumptive sentences for each:

1st degree:	15 years
2nd degree:	7 years
3rd degree:	4 years
4th degree:	9 months

This sentence must be imposed unless there exists a preponderance of aggravating or mitigating circumstances, in which case the sentence may be increased or reduced within the limits set by statute. The following extended terms are provided by statute, if aggravating circumstances (e.g., "persistent offenders", "professional criminals", "killing for hire", etc.) are found to exist:

1st degree murder:	30 years to life imprisonment
All other 1st degree:	20 years to life imprisonment
2nd degree:	10 years to 20 years imprisonment
3rd degree:	5 years to 10 years imprisonment
4th degree:	18 months imprisonment

If mitigating circumstances are present or outweigh the aggravating circumstances, the offense class may be lowered one degree for sentencing purposes regardless of the crime for which the offender has been convicted.

Even though a presumptive sentence is imposed, the actual release date is within the discretion of the Parole Board within the limits defined by statute.

(Title 2C-11-3)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge is limited by the presumptive sentence that must be imposed unless mitigating or aggravating circumstances exist. When imposing sentence, the court has the authority to set the minimum parole eligibility date which may not exceed one-half of the maximum sentence imposed. The Parole Board cannot release an offender prior to the expiration of this minimum term. If the court does not set such a date, the actual release date is within the discretion of the Parole Board.

b. Non-incarcerative Alternatives Available

Probation, fine, restitution, and/or commitment to a community facility, such as a halfway house, can be ordered, as provided by statute in lieu of incarceration.

c. Required Sentence Justification

(1) All Cases

No available data.

(2) For Deviations Only

The court must support aggravating and mitigating circumstances and explain in writing its reasons for an increase or decrease in the presumptive sentence.

3. Statutory Provisions for Sentence Review

An Appellate Division of the Superior Court has authority to review the findings of fact of the sentencing court and its support for mitigating and/or aggravating circumstances and may modify this sentence if not fairly supported.

Any sentence lowered because of extreme mitigating circumstances can be appealed within ten days.

(Title 2C)*

4. Nature of Parole Decision-Making Authority

Offense Classes 1 and 2 have a fixed minimum term which must be served before the offender is eligible for parole. The court has the authority to set the minimum date for release on parole, but this is not mandatory. If no minimum term is set by the Court, the actual release date is at the discretion of the Parole Board and can be at anytime up to the expiration of the maximum term. Parole revocation, recommitment or reparole cannot exceed the original sentence imposed at trial.

(Title 2C)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

By statute, good time is earned at a rate of one day per five days served. Good time credit varies for first offenders, with one-fifth for a one year sentence and increasing for longer sentences as specified by statute. There is no good time applicable to reduce a mandatory minimum term.

(Title 2C)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

The possession of a deadly weapon other than a firearm or explosive during the commission of a felony is a 3rd degree offense. The possession of a firearm or explosive during the commission of a felony is a 2nd degree offense. It is within the court's discretion to determine whether the sentence for such a weapons offense will run concurrently or consecutively with any other sentence imposed for the felony in which the weapon was involved.

b. Habitual or Repeat Offender

If a person has been convicted of two or more crimes in a ten year period prior to his conviction for the present offense, his sentence may be extended in accordance with the statutory provisions for extended sentences described in Section #1 above.

c. Other

By statute, a second conviction for a sexual offense results in a mandatory minimum sentence of incarceration, which is not to be suspended.

(Title 2C)*

* New Jersey Code of Criminal Justice.

New Mexico

Determinate/Presumptive Sentencing

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Offenders who have committed capital felonies receive a sentence of death or life imprisonment. Punishment for capital felonies is imposed at a sentence hearing. For noncapital felonies, the following sentence terms are provided by statute:

- 1st degree: 18 years
- 2nd degree: 9 years
- 3rd degree: 3 years
- 4th degree: 18 months

These penalties must be imposed by the court unless certain alterations are made. The judge shall include in the sentence a period of parole to be served after actual completion of imprisonment.

Alterations of the sentence are made on the basis of a finding of aggravating or mitigating circumstances at a sentencing hearing. Sentence alterations are made by the judge and cannot exceed one-third of the basic sentence.

(Chapter 29-39)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The court is limited by the basic sentences provided by statute which must be imposed unless aggravating and mitigating circumstances are found. The sentence imposed is for a definite period of years to be served in full minus good-time.

b. Non-incarcerative Alternatives Available

The court may impose probation, fine, suspended sentence, as specified by statute.

c. Required Sentence Justification

(1) All Cases

No provision.

(2) For Deviations Only

If the court alters the basic sentence, it must issue a brief statement of the reasons for the alteration and incorporate it in the record.

(Chapters 29-39)*

3. Statutory Provisions for Sentence Review

A sentence of death is automatically reviewed by the Supreme Court of New Mexico regarding the validity of the sentence and whether support exists for a finding of mitigating or aggravating circumstances.

(Chapter 29-39)*

4. Nature of Parole Decision-Making Authority

The period of parole is considered part of the sentence of imprisonment.

Those serving a life term for commission of a capital felony become eligible for a parole hearing after thirty years. If the offender is not released, subsequent hearings are granted every consecutive two-year interval thereafter. When released, the offender must serve five years on parole unless the board deems such service unnecessary.

Those convicted of 1st, 2nd, and 3rd degree crimes, must serve the term of imprisonment imposed, followed by two years on parole. Fourth degree offenders serve a one year parole term. All such offenders are under the supervision of the Parole Board.

(Chapter 29-39)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

As of July 1979, statutorily provided automatic good time was abolished. As of June 1981, credit for meritorious conduct was reduced from 12 days per month to ten days per month.

The following additional sentence reductions are also provided:

Support service work: 0 to 5 days per month;

Industrial good time: 0 to 10 days per month based on attendance and performance

Extra-industrial good time: 0 to 10 days additional to above based on performance.

These deductions may be forfeited for rule violations, but may be regained if no subsequent violations occur for six months.

(Chapter 29-39)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

If a firearm is used in the commission of a non-capital felony, the basic sentence prescribed for the offense shall be increased by one year. This term cannot be suspended.

For a second offense with the use of a firearm, a three year increase in the basic sentence is applied. This term is non-suspendable.

b. Habitual or Repeat Offender

An offender convicted of a non-capital felony who has one prior felony conviction has the basic sentence increased by one year, which is not suspendable.

If the offender has two prior felonies, the basic sentence is increased by four years, non-suspendable.

If the offender has three or more prior felonies, the basic sentence is increased by eight years, non-suspendable.

(Chapter 29-39)*

* New Mexico Statutes Annotated, 1978 and 1980 Supplement.

New York

Partially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Indeterminate sentences are imposed for most felonies. By statute, the following offense classifications, with corresponding minimum/maximum penalties, are established:

Class A:	up to life imprisonment
Class A-I:	15 to 25 years
Class B:	1 to 25 years (except violent felonies)
Class B-II:	3 to 8 years, 4 months
Class C:	1 to 15 years (except violent felonies)
Class D:	1 to 7 years
Class E:	1 to 4 years.

(Book 29)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The court sets both the minimum and the maximum term within the limits defined by statute. The minimum term must be at least one year and not more than one-third of the maximum term imposed. The maximum term must be at least three years.

b. Non-incarcerative Alternatives Available

The court may impose probation, fine, or a suspended sentence, as provided by statute.

c. Required Sentence Justification(1) All Cases

No provision.

(2) For Deviations Only

If the court determines that an indeterminate sentence should not be imposed, it must make a statement in the record as to the findings upon which this determination is made.

(Book 39)*

3. Statutory Provisions for Sentence Review

No provision.

4. Nature of Parole Decision-Making Authority

A person serving an indeterminate term is eligible for parole any time after the expiration of the minimum term. A person, may, if he requests, be released conditionally when the total good behavior allowed him equals the unserved portion of his maximum term. Anyone released is under the supervision of the parole authority for at least a period of one year.

(Book 39)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Every person serving an indeterminate term may receive a reduction of up to one-third of his maximum term for good-behavior.

Any person serving a definite term may also receive a reduction of up to one-third of his term for good behavior.

(Book 39)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Users of a firearm during the commission of a felony, as defined by statute, receive an indeterminate sentence with the following maximum:

Class B: 6 to 25 years
Class C: 4.5 to 15 years

The minimum must be one-third of the maximum term imposed, except for armed Class B offenses, for which the minimum term can be between one-third and one-half of the maximum.

b. Habitual or Repeat Offender

With a conviction for a prior felony of a violent nature within the past ten years, the offender shall be sentenced to an indeterminate term, with the maximum set as follows:

Class B present offense: 12 to 25 years;
Class C present offense: 8 to 15 years;
Class D present offense: 5 to 7 years;
Class E present offense: at least 4 years.

The minimum term is set at one-half of the maximum imposed.

c. Other

The court may impose a determinate sentence for Classes D & E and some Class C felonies if no prior record exists and other factors make the imposition of an indeterminate sentence too severe.

(Book 39)*

* New York, Gilbert's Criminal Law and Procedure, 1980-81.

North Carolina

Determinate/Presumptive Sentencing

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

By statute, the following offense classifications are provided:

Class A	:	death or life imprisonment
Class B	:	life
Class C	:	20 years
Class D	:	16 years
Class E	:	12 years
Class F	:	8 years
Class G	:	6 years
Class H	:	3 years 6 months
Class I	:	2 years
Class J	:	1 year

Prior offenses increase these penalties.

Except for Class A and B felonies, the court must impose a presumptive prison term provided by law or may impose a shorter or longer sentence on the basis of mitigating or aggravating circumstances.

In capital cases a separate hearing is held to determine if the death penalty is appropriate.

(Chapter 15-1 through 20-372)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The trial judge must impose a presumptive sentence unless mitigating or aggravating circumstances exist. The sentence imposed must be served in full minus good-time.

In the case of a death sentence, a sentence review hearing is held to determine if the death penalty is appropriate.

b. Non-incarcerative Alternatives Available

The court may impose probation, fine, and/or suspend sentence, as provided by law.

c. Required Sentence Justification

(1) All Cases

If the court imposes the death penalty, it must set forth in writing the reasons supporting the sentence.

(2) For Deviations Only

If a judge imposes a prison term for a felony that differs from the presumptive term, he must enter on the record his findings of fact regarding all aggravating or mitigating circumstances, or class of prior convictions, as appropriate.

If the court imposes the death penalty, it must set forth in writing the reasons supporting the sentence.

(Chapter 15-1 through 20-372)*

3. Statutory Provisions for Sentence Review

If the sentence imposed exceeds the presumptive sentence, the defendant is entitled to appeal as a "matter of right".

A defendant may appeal a death sentence before the Supreme Court; this appeal, however, is not automatic.

(Chapter 15-1 through 20-372)*

4. Nature of Parole Decision-Making Authority

If sentenced prior to July 1978, an offender is eligible for parole after serving one-fourth of the minimum term. Offenders sentenced during the period of July 1, 1978 - June 30, 1981 are eligible for parole after serving 1/5 of the maximum term or the full minimum term less good time.

If parole is revoked, the offender can be imprisoned for no longer than the maximum sentence originally imposed. All felons, other than those convicted for Class A or B offenses, serving prison terms for felonies committed after July 1st, 1981, are paroled 90 days before the expiration of their term minus good time. They are then unconditionally discharged, unless they have violated parole conditions.

(Chapter 15-1 through 20-372)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

One day is deducted from the prison term for each day in custody. An offender may lose time accrued, however, if he violates prison rules. After serving 30 days in prison, officials must inform the prisoner when he will be released if he accrues all good time available.

Additional sentence reductions may be awarded for work, educational work, etc., and are subject to forfeiture for misconduct.

(Chapter 15-1 through 20-372)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Any person previously convicted of a felony, using a firearm in its commission, must serve at least seven years without any good time or 14 years with a good time allowance. If the offender commits a second felony involving the use of a firearm, he is not eligible for parole and cannot be treated as a youthful offender. His sentence is served consecutively with or subsequent to the expiration of the sentence for the present offense.

b. Habitual or Repeat Offender

Offenders in Classes C, D, E and F, have their sentences increased by two years if they have had one prior conviction and by four years if they have had two prior convictions. Offenders in Class G have their penalties increased by one year for one prior conviction and two years for two prior convictions. Offenders in Class H increase their penalty by one and one-half years for one prior conviction and two and one-half years for two prior convictions. Offenders in Classes I and J increase their penalties by six months for one prior conviction and one year for two prior convictions.

(Chapter 15-1 through 20-372)*

* General Statutes of North Carolina, 1978 and Supplement, 1980.

North Dakota

Partially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Felony offenses are divided into four classes (subject to maximum penalties) as provided below:

Class AA: life imprisonment (30 years less good time must be served before the offender is eligible for parole).

Class A: 20 years

Class B: 10 years

Class C: 5 years

Unless specifically authorized, no court shall include a minimum term of imprisonment as part of the sentence.

(Title 12.1)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The judge sets the maximum term provided by law. Unless specifically authorized, the court shall not impose a minimum term as part of the sentence. The actual date of release is left up to the Parole Board.

b. Non-incarcerative Alternatives Available

The court may impose a fine, probation, and/or restitution, as provided by statute.

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c. Required Sentence Justification(1) All Cases

All sentences imposed must be accompanied by a written statement by the court setting forth reasons for the sentence. The statement shall become part of the record of the case.

(Title 12.1)*

3. Statutory Provisions for Sentence Review

No specific provision.

(Title 12.1)*

4. Nature of Parole Decision-Making Authority

The Parole Board determines the actual release date. Application for parole shall be in writing, addressed to the Board, signed by the offender or by someone on his behalf. The Board will decide whether or not to grant parole on the basis of the offender's history, etc. The offender, upon release, can remain in the custody of the Board until the expiration of the term for which he was sentenced. If the offender violates parole, he has the right to a hearing and to other due process rights and may be reimprisoned for the remainder of his sentence.

(Title 12.1)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Cooperation or compliance regarding assigned jobs and institutional rules results in sentence reductions as follows:

Sentence of 1 to 3 years: 6 days per month;
Sentence of 3 to 5 years: 7 days per month;
Sentence of 3 to 10 years: 8 days per month;
Sentence of 10 years or more: 10 days per month.

Meritorious conduct entitles the offender to an additional reduction of up to two days per month for the months already served.

(Title 12)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

If the offense committed is a Class A or B felony, and the offender used a firearm or threatened to use one, the court shall impose a minimum sentence of four years, non-suspendable, during which time the offender is ineligible for parole.

If the offense is a Class C felony, the court shall impose a two year minimum.

b. Habitual or Repeat Offender

The court may sentence a convicted offender to an extended sentence as a "dangerous" offender if the offender has two prior felony convictions of Class B or above, or one Class B conviction and two lower felony convictions.

If the present offense is Class A, the extended term may be life imprisonment. If it is Class B, the extended term may be 20 years. If it is Class C, the extended term may be 10 years.

c. Other

An extended sentence may also be imposed upon a finding that the offender is:

- 1) dangerous and mentally abnormal;
- 2) a professional criminal; or
- 3) threatened bodily harm or used a weapon.

(Title 12.1)*

* North Dakota, Century Code Annotated and Supplement, 1979.

Ohio

Indeterminate/Mandatory Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

All felonies (other than capital offenses), carry indeterminate sentences with the maximum term fixed by statute, and the minimum term set by the judge. Four classes of offenses are established by statute, each with a specified maximum term and four possible minimum terms that may be imposed.

	<u>Minimum</u>	<u>Maximum</u>
1st degree	4, 5, 6, or 7 years	25 years
2nd degree	2, 3, 4, or 5 years	15 years
3rd degree	1, 1.5, 2, or 3 years	10 years
4th degree	.5, 1, 1.5, or 2 years	5 years

A separate sentencing proceeding is held for capital offenses to determine whether the penalty should be death or life imprisonment.

(Title 29)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The sentencing judge sets a minimum and maximum sentence term, limited by the mandatory maximum and the four alternative minimums provided by the statute. The Parole Board determines the actual release date within the minimum-maximum range set by the judge.

b. Non-incarcerative Alternatives Available

The court may also impose probation, fine, and/or restitution, as provided by statute.

c. Required Sentence Justification

No provision.

(Title 29)*

3. Statutory Provisions for Sentence Review

No provision.

(Title 29)*

4. Nature of Parole Decision-Making Authority

Offenders are eligible for parole after serving their minimum term minus good time. A person serving a penalty for a capital offense is eligible for parole after serving 15 years. The minimum period of supervision by the Adult Parole Authority is one year for all offenders except those serving life sentences, for which the minimum period is five years.

(Title 29)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Sentence reductions are calculated according to the following statutory formula:

<u>Minimum Term</u>	<u>Period</u>
1 year	5 days per month
2 years	6 days per month
3 years	8 days per month
4 years	9 days per month
5 years	10 days per month

(Title 29)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

No specific provision.

b. Habitual or Repeat Offender

The court may impose longer sentences by setting a higher minimum term for a repeat offender. In such cases, probation may also not be granted.

c. Other

For certain drug and sex offenses, mandatory incarceration is required and the use of non-incarcerative alternatives is prohibited.

(Title 29)*

* Page's Ohio Revised Code and 1980 Supplement.

Oklahoma

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

By statute, minimum sentence terms are provided by each offense.

(Title 57, §353)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

Unless a non-incarcerative alternative is imposed, the court shall sentence an offender to a term of imprisonment for a definite number of years not to exceed the maximum prescribed by law for the offense. This term becomes the maximum time for which an offender may be incarcerated. The actual release date is at the discretion of the Parole Board.

As an alternative, the court may under the state's Indeterminate Sentencing Act, sentence the offender to an indeterminate term of imprisonment, the maximum of which may not exceed that prescribed by law and the minimum of which may not be greater than one-third of the maximum imposed.

b. Non-incarcerative Alternatives Available

A variety of non-incarcerative alternatives are also available to the court. The court can impose probation, fine, and/or restitution, or suspend sentence as provided by statute.

c. Required Sentence Justification(1) All Cases

The court must hand down a written judgment and sentence.

* (Title 57, §353)

3. Statutory Provisions for Sentence Review

No specific provisions.

4. Nature of Parole Decision-Making Authority

Upon completion of one-third of the minimum of an indeterminate sentence or one-third of a determinate sentence, the offender may become eligible for parole consideration. The Board of Parole, with or without an application being made, will conduct a hearing and make recommendations to the Governor regarding parole.

By statute, the Board can not make recommendations to the Governor for anyone who has been convicted of three or more felonies arising out of separate and distinct transactions with two or more incarcerations for such felonies, unless such persons have served at least one-third of the sentence imposed or ten years, which ever is less.

(Title 57, §332.7)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Every inmate engaged in work, school or a vocational training program, shall have one day deducted from his term of sentence for every one day engaged in such activity. (Where an indeterminate sentence is involved, this deduction applies only to the maximum).

In addition, inmates are entitled to a deduction of 20 days for every pint of blood donated to the American Red Cross or any agency or hospital approved by the Department of Corrections. An inmate may receive blood time credit for no more than four donations in any one year period.

All inmates are allowed credit for jail time prior to their transportation to prison.

* (Title 57, §138)

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

No provisions.

b. Habitual or Repeat Offender

Offenders convicted twice of a felony punishable by imprisonment are, upon second conviction, subject to a sentence of imprisonment for a term not less than ten years if the second offense is one for which, upon first conviction, the offender could have been imprisoned for a term exceeding five years.

If the subsequent offense is such that, upon first conviction, the offender would be subject to a punishment of less than five years, he is, upon the second conviction, punishable by imprisonment for a term not greater than ten years.

* (Title 21, §51)

* Oklahoma Annotated Statutes and 1981 Supplement.

Oregon

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Felonies are classified, by statute, as follows:

Murder: Death or life imprisonment;
 Treason: Mandatory life imprisonment;
 Class A: Maximum term of 20 years;
 Class B: Maximum term of 10 years; and
 Class C: Maximum term of 5 years.

After a plea or guilty verdict, in a case where discretion is conferred upon the court as to the extent of punishment to be imposed, the court, upon the suggestion of either party that aggravating and/or mitigating circumstances exist, may in its discretion, hear such arguments and decide the sentence term accordingly. The term which the judge sets becomes the maximum for which an offender may be incarcerated.

(Titles 161.535, 161.605, 14, and 144.110)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

Whenever a person is convicted of a felony, the court, if it imposes a sentence of imprisonment, shall sentence such a person to a period of imprisonment for an indeterminate term, but stating and fixing in the judgment and sentence a maximum term for the crime, which shall not exceed the maximum term fixed by law. This term becomes the maximum term for which an individual may be incarcerated, the actual release date being within the discretion of the Parole Board.

The judge may order a pre-sentence report prior to sentencing.

The judge may also impose a minimum term of imprisonment of up to one-half of the maximum sentence imposed, in any felony case.

b. Non-incarcerative Alternatives Available

A variety of non-incarcerative alternatives are provided by statute which can be used at the court's discretion.

When a person is convicted of a felony, if the court determines that it is in the best interests of the public as well as the defendant, the court may suspend execution of the sentence for any period of not more than five years, and place the defendant on probation for a definite or indefinite period, not less than one or more than five years.

In addition to any other sentence imposed or in lieu of any other sentence, the judge may impose restitution or a fine. Fines for felonies of a Class A, B, or C nature shall be fixed by the court at a maximum of \$2,500.

A suspended sentence and/or probation cannot be imposed for offenders convicted of murder, treason, or a Class A or B felony.

c. Required Sentence Justification

(1) All Cases

In all felony cases, the court shall state on the record the reasons for the sentence imposed.

(2) For Deviations Only

In cases involving the use of firearms, the court must state the circumstances which warranted a lesser penalty than that provided by statute, if such was imposed.

In cases involving habitual offenders, the court must state the grounds for imposing an extended term of imprisonment.

(Title 137.120, 137.079, 144.110, 161.725, 137.106, 137.010, 161.625, 161.715, 161.610)*

3. Statutory Provisions for Sentence Review

For those crimes which, by statute, carry the death penalty, a separate sentencing proceeding is held to determine whether the individual shall be sentenced to life imprisonment or death. If the court, after hearing arguments for and against the death penalty, imposes the sentence of death, the sentence shall be subject to automatic review by the Supreme Court within 60 days after certification of the entire record by the sentencing court.

In all cases, except for those involving the death penalty, there is no provision for sentence review outside of the normal appeal process.

(Title 163.116)*

4. Nature of Parole Decision-Making Authority

Within six months following admission to prison, the Parole Board conducts a parole hearing and sets the initial date for release.

In any felony case where the judge recommends a minimum term of sentence to be served, the Board shall not release the individual until the recommended minimum term has been served except upon affirmative vote of at least four Board members.

The Board shall not release on parole anyone convicted of an aggravated murder except as provided by statute. Among the offenses classified as "aggravated murder" are contract killing, for which an offender must be confined for a minimum of 30 years without parole; and murder of a police officer, correctional officer, etc., for which the offender must be confined for a minimum of 20 years without parole. In such cases, the Board shall review parole eligibility at regular intervals, not exceeding one year, following the expiration of the minimum statutory term to be served. Any person whose offense is particularly violent or whose offense was preceded by two or more convictions for a Class A or Class B felony may be determined by the Parole Board to be also ineligible for parole.

(Title 144.120, 144.110, 163.095)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Anyone confined for a term of imprisonment other than life, is entitled to the deduction of one day for every two days served of a term of imprisonment greater than one year and one day.

From any term of imprisonment, offenders are entitled to the following deductions for work within prison industry or certified educational programs.

During the 1st year: 1 day for every 15 days of such activity;
Following 1st year through 5th year: 1 day for every 7 days of such activity;
Each subsequent year following fifth year: 1 day for every 5 days of such activity.

Anyone employed in prison agriculture is entitled to the following deductions:

During 1st year: One day for every 10 days employed;
Each subsequent year following first year: One day for every 6 days employed.

Anyone employed at a work camp is entitled to a deduction of one day for every 6 days employed during the first year, and a deduction of one day for every 4 days employed for every subsequent year.

(Title 421.120)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

If the court determines that the use or threat of a firearm was present during the commission of a felony, it shall impose at least the minimum term of imprisonment as provided below:

First Conviction: minimum of 5 years;
Second Conviction: minimum of 10 years;
Third Conviction: minimum of 30 years.

However, if it is the first time the defendant is subject to punishment under this section, the court may suspend execution of sentence otherwise required, or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justifying such a lesser sentence and sets forth those circumstances in its statement on sentencing.

b. Habitual or Repeat Offender

The maximum term of an indeterminate sentence for a dangerous offender is 30 years. This extended term can be imposed if the court finds that because of the dangerousness of the defendant, an extended period of imprisonment is required, provided that either the defendant is being sentenced for a Class A felony and has a personality disorder, or the defendant has previous felony convictions.

(Title 16, 161.610, and 161.725)*

* Oregon Revised Statutes and Supplement, 1981.

PennsylvaniaPartially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The following offense classifications are provided by statute:

Murder I: death penalty or life

Murder II: life imprisonment

Murder III: life imprisonment

Felony 1st Degree: imprisonment not greater than 20 yrs.

Felony 2nd Degree: imprisonment not greater than 10 yrs.

Felony 3rd Degree: imprisonment not greater than 7 yrs.

Misdemeanor 1st Degree^a: imprisonment not greater than 5 yrs.

Misdemeanor 2nd Degree^a: imprisonment not greater than 2 yrs.

Misdemeanor 3rd Degree^a: imprisonment not greater than 1 year

Drug offenses are not included in the above offense classifications, but are described separately in Title 35, §780 (101-144).

The court shall impose term of imprisonment stating in such sentence the minimum-maximum limits; the maximum must not exceed that prescribed by law and the minimum must not exceed one-half of the maximum.

(Title 18:106, 18, §106 and §2502, Title 35, §780 [101-144])*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

If the sentencing authority imposes a term of imprisonment, the indeterminate term set may be within the limits set by law, provided the minimum term imposed does not exceed one-half of the maximum, and the maximum term imposed does not exceed the maximum penalty set by statute.

^a In Pennsylvania, a misdemeanor carries a sentence of up to 5 years imprisonment.

b. Non-incarcerative Alternatives Available

As an alternative to imposing a term of imprisonment, the sentencing authority has available a variety of non-incarcerative alternatives for all offenses except Murder I and Murder II, which carry mandatory sentences.

These alternatives include probation, fine, restitution, and/or suspended sentence, as provided by statute. In addition, an Accelerated Rehabilitative Disposition Program (ARD), has been established by Court Rule for defendants accused of any crime except Murder I or II. The ARD Program permits a defendant to agree to undergo a specified treatment program which, if successful, results in dismissal of his case. A comparable program, Probation Without Verdict, exists for defendants in drug cases.

c. Required Sentence Justification(1) All Cases

The judge shall set forth in writing a statement of reasons for imposing each sentence.

3. Statutory Provisions for Sentence Review

Upon conviction of a felony which carries the death penalty a separate hearing is held to determine whether the death penalty or life imprisonment should be imposed. Aggravating and mitigating circumstances are considered, and the court is required to set forth in writing the reasons for the imposition of the death penalty if such is imposed.

Imposition of the death penalty sentence is subject to automatic review by the Supreme Court of Pennsylvania.

The Governor has the authority to commute the death penalty to life or to commute a sentence of life imprisonment to a term of years.

(Title 42:9711)*

4. Nature of Parole Decision-Making Authority

If the maximum term of confinement is greater than two years, the offender is eligible for parole at the expiration of the minimum term, with the approval of the Board of Parole.

If the maximum term of confinement is less than two years, the court can set the date of parole which can be anytime prior to the expiration of the minimum term imposed.

5. Statutory Provisions for Good Time and Other Sentence Reductions

No provisions.

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Under the state's "Uniform Firearms Act", if a firearm charge is brought against an offender, upon conviction, he may be subject to an additional sentence of imprisonment of up to a maximum of five years. This penalty, may run consecutively or concurrently with any other sentence imposed, within the discretion of the sentencing authority.

b. Habitual or Repeat Offender

No provision.

(Title 18:6101)*

* Purdon's Pennsylvania Cons. Statutes Annotated and Supplement, 1980-81.

Rhode Island

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

When imposing punishment, the court sets a maximum term for which the offender shall be imprisoned within the penalty prescribed by law for the particular offense.

(Title 11-23-2)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

Certain offenses, such as first degree murder, carry a mandatory sentence of life imprisonment; other felony offenses carry mandatory minimum or maximum terms prescribed by law. (For example, manslaughter carries a sentence of not more than 20 years. Second degree murder carries a minimum sentence of not less than ten years.) The judge has discretion to impose any term of imprisonment which does not exceed the maximum or fall below the minimum term, as provided by statute. The actual release date is determined by the Parole Board. The death penalty exists for those who commit murder while under sentence of life imprisonment.

Presentence reports are required for all felony convictions.

b. Non-incarcerative Alternatives Available

The court may suspend sentence, except where prohibited by law in cases of felonies punishable by mandatory life imprisonment, and place the individual on probation. Restitution in the form of monetary payment or community service may be imposed in lieu of another sentence or as a condition of probation.

c. Required Sentence Justification

No provisions.

(Title 12-19-6, 12-19-8, 19-19-11, 12-19-13, 12-19-32)*

3. Statutory Provisions for Sentence Review

No provisions.

4. Nature of Parole Decision-Making Authority

Unless serving a life term or designated a habitual criminal, an offender may, by affirmative vote of the majority of the Board, be placed on parole when he has served not less than one-third of his term.

Those serving a life term are not eligible for parole consideration until serving at least ten years and, in addition, need the unanimous affirmative vote of the Parole Board.

(Title 13-8-13, 13-8-9)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

No sentence reduction provisions presently exist. Good conduct and blood donation deductions have been repealed.

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

The following statutory penalties are provided for offenses involving the use of a firearm; these sentences cannot be suspended or probated:

First Conviction: term of imprisonment not less than two years nor greater than ten years.

Second Conviction: term of imprisonment not less than five years nor greater than 20 years.

Third and Subsequent Conviction: term of imprisonment not less than ten years and up to life.

b. Habitual or Repeat Offender

Following the second or more felony convictions carrying prison terms, a defendant shall be imprisoned for a term not to exceed 25 years in addition to the sentence imposed for the offense for which he was convicted.

A permit for parole may be issued at any time after the individual has served not less than five of the 25 years required as an habitual offender.

(Title 11-47-3, 12-19-21, 13-8-12)*

* Rhode Island Annotated Code and Supplement, 1981.

South CarolinaPartially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Each felony is described in the statutes, with an appropriate sentence provided. The court shall sentence the offender to a term of imprisonment which becomes the maximum time for which the offender may be incarcerated. This maximum term must be within the limits fixed by law for the crime.

The actual release date is determined by the Parole Board, which may release the offender prior to the expiration of the maximum term set by the court.

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The judge has the discretion to impose a term of imprisonment, the maximum of which must be within the limits set by statute, as well as the option of imposing a non-incarcerative sentence if such a sentence is not prohibited by statute. Certain crimes, such as murder, carry a mandatory sentence of death or life imprisonment.

b. Non-incarcerative Alternatives Available

The court may impose probation, restitution, and/or fine, permitted by statute.

c. Required Sentence Justification(1) All Cases

In cases involving the death penalty, the judge or jury must detail in writing the aggravating circumstances which justify imposition of the sentence. The vote for such a sentence must be unanimous and at least one statutorily provided aggravating circumstance must be found to exist. If the jury does not recommend the death penalty or cannot agree on a verdict, the judge sentences the offender to life imprisonment.

The death penalty is subject to appeal to the Supreme Court. The Governor, in his discretion, may commute such a sentence to life imprisonment.

(Title 16-3-20, 17-25-120)*

3. Statutory Provisions for Sentence Review

The Supreme Court of South Carolina shall review each conviction of a capital offense and errors of law can also be appealed.

In addition, the "Uniform Post-Conviction Procedure Act" permits defendant in other cases to institute post conviction proceedings following sentencing.

(Title 18-9-20, 17-27-20)*

4. Nature of Parole Decision-Making Authority

Upon ten days written notice to the solicitor and judge who participated in the trial of any prisoner, the Board may parole any prisoner convicted of a felony and sentenced to confinement who, if sentenced to not more than 30 years, has served at least one third of the term, or who, if sentenced to life imprisonment or imprisonment for any period in excess of 30 years, has served at least 10 years, or, if a first offender and sentenced to an indeterminate term, has served the minimum for which he was sentence.

Prisoners may be paroled sooner if they suffer from a serious medical condition.

The Board will review eligibility for parole after a prisoner has served one-fourth of his sentence, and if denied parole, thereafter at regular 12 month intervals.

(Title 24-21-610 and 24-21-620)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Good behavior reductions are provided by statute. In addition, earned work credits provide up to one day reduction for every two days worked, with a maximum of 180 days per year.

Earned work credits do not apply to a mandatory minimum sentence for armed robbery.

(Title 24-13-230, 24-13-210, 24-21-635, 16-11-330)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

Anyone convicted of possession of a firearm during the commission of certain crimes, with the exception of those receiving a sentence of death or life imprisonment, are subject to penalties in addition to the punishment provided by law for the specific offense. These penalties are as follows:

First Conviction: a term of imprisonment not greater than one year or a fine of \$1,000; or both,

Second Conviction: a term of imprisonment not greater than two years.

Third and Subsequent Conviction: a term of imprisonment not greater than five years.

b. Habitual or Repeat Offender

Upon the third conviction for certain specified crimes (i.e., murder, voluntary manslaughter, rape, armed robbery, arson, burglary, etc.) the offender is subject to the maximum sentence provided by law.

Upon the fourth conviction of the aforementioned crimes, the offender shall be subject to a life sentence, which becomes the minimum term he can receive.

(Title 16-23-490, 17-25-40)*

* Code of Laws of South Carolina and 1981 Supplement.

South DakotaPartially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Except as otherwise provided by law, felonies are divided into the following eight classes, distinguished by respective maximum penalties.

- Class A: life imprisonment or death
- Class B: life imprisonment only; no alternatives
- Class 1: life imprisonment
- Class 2: 25 years
- Class 3: 15 years
- Class 4: 10 years
- Class 5: 5 years
- Class 6: 2 years

Before imposing the sentence, the court may order a hearing on mitigating or aggravating circumstances which should be considered in the punishment imposed.

(Title 22-24)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The sentence imposed by the court is the maximum which can be served. The Parole Board determines the actual release date for the offender.

b. Non-incarcerative Alternatives Available

For offenses in Classes other than A or B, the court may impose a fine, probation, or removal from office, etc., as specified by statute.

c. Required Sentence Justification

(1) All Cases

In cases where a sentence of death has been imposed the jury shall designate in writing the aggravating and/or mitigating circumstances found.

(Title 22-24)*

3. Statutory Provisions for Sentence Review

All cases in which the death penalty is imposed are reviewed by the State Supreme Court. This sentence review is in addition to the defendant's right to direct appeal.

(Title 22-24)*

4. Nature of Parole Decision-Making Authority

Other than those persons sentenced to life imprisonment, a person is eligible for parole if he is:

- 1) a first offender, and one-fourth of the sentence has been served;
- 2) a second offender, and one-half of the sentence is served; or
- 3) convicted of three or more offenses and three-fourths of the sentence has been served.

The Board fixes the time and conditions of parole. If parole is violated, the original sentence may be reinstated.

(Title 22-24)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Any convict showing above average good behavior, diligence in labor, work, etc., shall be compensated by a reduction in the term of confinement at the discretion of the Governor and on the recommendation of the Board.

(Title 22-24)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Concealment of a weapon with intent to commit a felony is a Class 5 felony. Any person armed with a firearm, other than a machine gun or short-shotgun, is guilty, upon first conviction, of a third class felony. The penalty is imposed consecutively with the sentence imposed for the principal felony. Upon a second or subsequent conviction, the offense is treated as a first class felony.

b. Habitual or Repeat Offender

Habitual offenders may receive increased penalties. One or two prior felony convictions may result in a sentence enhancement to the next higher class. With three or more prior felony convictions, the sentence is enhanced to a Class 1 felony.

(Title 22-24)*

* South Dakota Codified Laws, 1979 Revision.

Tennessee

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Certain offenses (a total of eleven) are defined as Class X offenses and their penalties are determinate in nature, not subject to good time reductions, or non-incarcerative alternatives.

By statute, in all other felony convictions, the jury shall fix a minimum-maximum term, provided that the minimum term does not exceed twice the minimum provided by law or one-half the difference between the minimum and maximum, plus the minimum prescribed by law, whichever is less.

A separate sentencing hearing is held to determine the sentence for first degree murder which is subject to the death penalty or life imprisonment.

(Title 39-40)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

In most felony cases, the jury fixes an indeterminate sentence, based on statutory limits. A defendant may waive his constitutional right to a jury trial and request trial and sentencing by a judge. Such waiver, however, seldom occurs.

b. Non-incarcerative Alternatives Available

The court may impose a fine, probation, etc., as permitted by statute.

c. Required Sentence Justification

(1) All Cases

Where the death penalty is imposed the jury must specify its reasons and any findings of aggravating or mitigating factors.

(Title 39-40)*

3. Statutory Provisions for Sentence Review

Death penalties are automatically reviewed by the state Supreme Court.

(Title 39-40)*

4. Nature of Parole Decision-Making Authority

Those sentenced to an indeterminate sentence shall not be eligible for parole until they have served their minimum term or at least one year.

For Class X offenses, the Parole Board may release the offender after he has served 40% of the mandatory sentence.

(Title 39-40)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

A prisoner can earn from one to fifteen days per month for participation in prison programs. Refusal to participate may result in loss of good behavior credits. By statute the following classifications are established for the accrual of good behavior credits:

Class I: 30 days per month
 Class II: 22 days per month
 Class III: 10 days per month
 Class IV: no credit

All offenders start out in Class III. The second year of the sentence they move to Class II. For the eleventh and subsequent year they move to Class I status. No good time for Class X offenders or repeat offenders is permitted.

(Title 39-40)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

Possession of a firearm in the commission of a felony results in a prison term of two to five years to be served consecutively with any other punishment provided by law for the felony committed. Use of a firearm in committing the felony requires a five year non-suspendable sentence for a first offender and ten years for a second offender, during which time the offender is ineligible for parole.

b. Habitual or Repeat Offender

Any person having three prior felony convictions, or two for certain offenses defined by statute, shall receive life imprisonment, during which time he is ineligible for parole and/or good time reductions.

c. Other

As noted above, Class X offenses include murder, kidnaping, certain drug offenses, etc. They require determinate, fixed penalties, defined by law, and are not subject to non-incarcerative alternatives. The actual release date for the offender is determined by the parole authorities.

(Title 39-40)*

* Tennessee Code Annotated and 1980 Supplement.

Texas

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The following minimum-maximum sentencing ranges are prescribed by statute:

Capital felonies: life imprisonment or death.
First degree felonies: 5 to 99 years or life imprisonment
Second degree felonies: 2 to 20 years
Third degree felonies: 2 to 10 years

Sentences are imposed at a separate sentencing hearing which is required for all felonies. The defendant can request sentencing by either the judge or the jury unless the initial trial was a bench trial, in which case sentence is imposed by the judge, or in the case of a capital offense, in which case sentencing must be done by the jury.

The jury, when imposing sentence, sets a fixed term of years which becomes the maximum sentence. The judge, when imposing sentence, fixes a minimum-maximum range. In both cases, parole eligibility is determined by the Parole Board and the governor.

(Volume 1-6)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The court assesses punishment and fixes the

b. Required Sentence Justification

No provision.

(Volume 1-6)*

3. Statutory Provisions for Sentence Review

Death sentences are subject to automatic appeal within sixty days. The Governor, in his discretion, may also commute such sentences to life or a term of years imprisonment, upon the written recommendation of the Board of Pardons and Parole. The governor can also, on his own, grant one 30-day reprieve.

(Volume 1-6)*

4. Nature of Parole Decision-Making Authority

Eligibility for parole is based on the date of conviction for the felony and the offense committed.

Any person sentenced for any felony offense before August 29, 1977 is eligible for parole after having served one-third of the maximum sentence, less good time.

Any person sentenced after August 29, 1977, for the following offenses is eligible for parole after having served one-third of the maximum sentence or a minimum of two years. This minimum term of service cannot be reduced by good time credit. The offenses are as follows:

Capital Murder
Aggravated Robbery
Aggravated Rape
Aggravated Sexual Assault
Aggravated Kidnapping

For any offense other than the aforementioned, the offender is eligible for parole after serving one-third of the maximum term less good time reductions.

No offender, however, serves more than 20 years without becoming eligible for parole consideration.

(Volumes 1-6)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

By statute, all inmates are classified according to their conduct, obedience, etc., as follows:

Trustee: 30 days credit for every 30 days served
Class I: 20 days credit for every 30 days served
Class II: 10 days credit for every 30 days served
Class III: no good time credit
Blood Time Credit: 30 days commutation of sentence for every voluntary blood donation (not to exceed one such commutation per year)

These deductions apply to reduce the one-third of the maximum term which must be served before becoming eligible for parole consideration.

(Volume 1-6)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

The use of a firearm in the commission of a felony enhances the penalty available. Upon conviction of a felony in which proof is made regarding the use of a firearm, in any manner, the sentencing authority must impose the penalty for the next higher penalty class. For example, rape is normally a second degree felony. However a conviction of rape with the use of a firearm, makes the offense a first degree felony and subject to the penalty for first degree felony and subject to the penalty for first degree felony offense.

For conviction of any offense with the use of a firearm, the judge does not have the discretion to impose probation as an alternative sentence to incarceration; the jury however, does have such discretion.

b. Habitual or Repeat Offender

If the offender has a prior felony conviction and is now convicted of a third degree felony, he is subject to a penalty for a second degree offense. If he is now convicted of a second degree offense, he is subject to a penalty for a first degree felony. If he is now convicted of a first degree felony, he is subject to a term of imprisonment not less than 15 years and not more than 99 years.

If the offender has two previous convictions for any felony, upon conviction of a third felony, he receives a penalty of life imprisonment.

(Volume 1-6)*

* Vernon's Texas Code Annotated and 1981 Supplement.

Utah

Partially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

By statute, the following felony and penalty classifications are established:

- Capital felony: death or life imprisonment
 1st degree felony: term of imprisonment not less than five years and up to life
 2nd degree felony: term of imprisonment not less than one year nor more than 15 years
 3rd degree felony: term of imprisonment not to exceed five years. Any felony not specified by statute shall be considered a felony in the 3rd degree.

Any term of imprisonment shall be for an indeterminate term not to exceed the maximum set by law and not less than the minimum set by law (with the exception of capital felonies which have definite terms).

(Title 76-3-103, 76-3-2-3, 77-18-4)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The judge has discretion to determine the minimum-maximum length of confinement, provided such term is within the limits set by statute for that particular offense. A variety of non-incarcerative alternatives are also within the court's discretion.

For Capital felonies, the court shall consider the aggravating and mitigating circumstances which exist before imposing the death penalty or life imprisonment.

The court, in its discretion, may require a pre-sentence investigation prior to imposing a sentence of imprisonment or an alternative sentence.

b. Non-incarcerative Alternatives Available

In all cases except capital felonies, the court may suspend criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitative program or make restitution to the victim or fulfill other specified conditions. By statute, fines for felonies may not exceed the following schedule:

- 1st or 2nd degree felony: \$10,000
 3rd degree felony: \$5,000
 Any other amounts as specifically provided by statute.

Probation and/or suspended sentence provided may be imposed at the discretion of the court and may be used in combination with fines and/or restitution or other conditions.

c. Required Sentence Justification(1) All Cases

In all felony cases, the court shall issue its "commitment setting forth sentence."

(Title 76-3-301, 77-18-1)*

3. Statutory Provisions for Sentence Review

A guilty verdict in a capital case requires further proceedings to consider the aggravating and mitigating circumstances present in the commission of the felony before the court or jury considers the issue of the penalty, and conviction and imposition of the death sentence shall be subject to automatic review by the Utah State Supreme Court within 60 days after certification of the entire court record by the sentencing court.

(Title 76-3-206, 76-3-207)*

4. Nature of Parole Decision-Making Authority

The Board shall determine within six months after the individual is committed to the correctional institution the date of parole or the date upon which his case shall be considered, and must promptly inform him of its determination.

(Title 77-27-11)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

No provisions.

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

In addition to any penalty prescribed by law for the commission of a particular class of felony, penalties for the commission of a felony while in possession of a firearm as follows:

1st and 2nd degree felonies: the court shall impose an additional term of imprisonment of one year and may impose a term of up to five years consecutively with any other penalty.

Third degree felony: the court may impose any additional term of imprisonment, not to exceed five years.

Individuals with prior felony convictions and who are convicted of a felony in which a firearm was used shall be sentenced to a term not less than five years and not more than ten years.

b. Habitual or Repeat Offender

Anyone twice convicted, sentenced and committed for felony offenses, at least one of which was a capital, 1st or 2nd degree felony, may, upon conviction of at least a 2nd degree felony, be determined a habitual offender and may be imprisoned for a term from 5 years to life. The discretion as to whether to prosecute an offender as a habitual offender is within the authority of the Prosecutor who must file an information before the committing authority which details the offender's felony convictions prior to the present offense. The jury need not be told of this designation.

If the court or jury finds the defendant guilty of the felony charged, the defendant is tried immediately by the same judge and jury on the charge of being a habitual offender.

(Title 76-8-1002 and Title 76-3-203)*

* Utah Annotated Code and 1980 Supplement.

Vermont

Partially Indeterminate1. Statutory Provisions Regarding Sentencing Classifications and Penalties

A felony is defined as any crime which carries the penalty of death, life imprisonment or any term of imprisonment greater than two years. Specific permissible sentences are provided by statute for each offense.

Certain crimes carry mandatory sentences such as a death for treason and life imprisonment for first degree murder (unless the victim is a police officer, correctional officer, etc. in which case the penalty is death).

For all other felonies, minimum/maximum terms of confinement are provided by statute.

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

When sentencing to any term other than life imprisonment, the court, shall not fix the term of imprisonment unless such term is definitely fixed by statute, but shall establish a maximum term and may also establish a minimum term. The maximum term shall be not more than the longest term fixed by law for the offense and the minimum term shall be not less than the shortest term fixed by law.

b. Non-incarcerative Alternatives Available

The court, in its discretion, may impose a sentence of probation, fine, and suspended sentence as provided by statute.

c. Required Sentence Justification(1) All Cases

A written sentencing judgment is required in all cases.

(Title 13, §2303 and §3401)*

3. Statutory Provisions for Sentence Review

The sentencing court may, upon its own initiative or upon the defendant's motion, reduce the sentence within 90 days following sentence imposition or within 90 days after entry of the sentencing judgment is made by the Supreme Court.

(Chapter 221:7042)*

4. Nature of Parole Decision-Making Authority

Parole can be granted only after the expiration of the minimum term. An offender sentenced to a minimum-maximum term must serve the maximum term imposed unless conditionally paroled.

(Title 28: 708)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Anyone sentenced and committed to the custody of the Department of Corrections earns sentence reductions as follows:

- Ten days per month: good conduct
- Five additional days per month: in the discretion of the administrative officer of the facility, if the inmate has rendered an unusual or special service.

Good time credit may be forfeited for rule infractions, and may be restored at the discretion of the administrative officer of the facility.

(Title 28: 811 and 28: 852)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

No provision.

b. Habitual or Repeat Offender

Except for offenders convicted of murder, (which carries a mandatory life sentence), upon the fourth or subsequent felony conviction, the offender may be sentenced to life imprisonment. The imposition of this life sentence is not mandatory and the decision to impose such a sentence is, by statute, within the court's discretion. In order to be sentenced under this provision the indictment must show the previous convictions and give appropriate notice of such status to the offender.

(Title 13, §11)*

* Vermont Statutes Annotated and 1981 Supplement.

Virginia

Indeterminate/Statutory Minimum-Maximum1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Felonies are statutorily divided into six classes, distinguished by presumptive ranges, as follows:

- Class I: life imprisonment or death;
 Class II: life imprisonment or any term not less than 20 years;
 Class III: term of imprisonment of not less than five years nor more than 20 years;
 Class IV: term of imprisonment of not less than two years nor more than ten years;
 Class V: term of imprisonment of not less than one year nor more than ten years, or, at the court's discretion, confinement in jail for not more than one year and a fine of not more than \$1,000, or both;
 Class VI: term of imprisonment not less than one year nor more than five years, or in the court's discretion, to confinement in jail for not more than one year and a fine of not more than \$1,000, or both.

Certain crimes are not codified and remain common law crimes. The penalties for these offenses are specifically prescribed by statute and fall outside of the six classes of felonies noted above.

(Title 18.2-58, 18.2-61)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Requireda. Judicial Discretion

The trial judge sets an indeterminate term of imprisonment, fixing the minimum and maximum terms within the limits defined by statute. The Parole Board determines the actual date of release within this indeterminate term.

b. Non-incarcerative Alternatives Available

Suspended sentence, probation, fine and/or restitution, as provided by statute can be imposed at the discretion of the court.

c. Required Sentence Justification(1) All Cases

The court must prepare a written judgment of sentence.

3. Statutory Provisions for Sentence Review

A motion to arrest judgment can be made in the trial court for material error, apparent on the face of the court record, such as lack of jurisdiction or violation of the Constitution or the laws of Virginia.

Immediate execution of the death sentence will be suspended upon a reprieve from the Governor or a writ of error from the Virginia Supreme Court.

(Title 53-316)*

4. Nature of Parole Decision-Making Authority

Every person convicted of a felony who is sentenced and committed to a correctional facility shall be eligible for parole as follows:

- 1st time offenders: eligible for parole consideration after serving 12 years or one-fourth of the term, whichever is less
 2nd time offenders: eligible for parole consideration after serving 13 years or one-third of the term, whichever is less
 3rd time offenders: eligible for parole consideration after serving 14 years or one-half of the term, whichever is less
 4th time offenders or subsequent time: eligible for parole consideration after serving 15 years or three-fourths of the term, whichever is less

Persons sentenced to death are not eligible for parole.

Persons sentenced to life for the first time shall be eligible for parole after 15 years.

Persons who have been sentenced to two or more life sentences shall not be eligible for parole until having served 20 years.

Persons convicted of an offense and sentenced to life imprisonment after being paroled from a previous life sentence shall not be eligible for parole.

(Title 53:209.1, 213.1, 220)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

A four level classification system for good conduct allowances is created by statute as follows:

- Class I: 30 days credit for every 30 days served (consideration for this class given to persons who perform in assignments requiring a high degree of trust, extra long hours or specialized skills).
- Class II: 20 days credit for every 30 days served (consideration for this class given to those who require moderate supervision in their assignments and whose assignments require responsibility in the care and maintenance of property.)
- Class III: 10 days credit for every 30 days served (consideration for this class given to those persons whose conduct and performance in assignments are marginal, require intensive supervision in their assignments and who exhibit minor disciplinary problems.)
- Class IV: no credit time (persons in isolation or segregation status for disciplinary or security reasons and those whose conduct and performance in their assignments are unsatisfactory).

Good conduct allowance shall be applied to reduce the person's maximum term of confinement while that person is confined; one-half of the credit allowed under the above provisions shall be applied to reduce the period of time a person shall serve before being eligible for parole.

(Title 53:209.4)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

The use or display of a firearm during the commission of a felony constitutes a separate offense and any person found guilty of such an offense shall be guilty of a Class 6 felony and punished accordingly. In cases of a second or subsequent conviction for the use of a firearm, the person shall be found guilty of a Class 5 felony and punished accordingly.

b. Habitual or Repeat Offender

Statutory habitual offender provisions apply only to the determination of parole eligibility.

(Title 18:2-5, 3.146.1: 387.8)*

* Virginia Annotated Code and 1981 Supplement.

Washington

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The following three classes of felonies and terms of imprisonment are established by statute:

- Class A: imprisonment for up to 20 years
- Class B: imprisonment for up to 10 years
- Class C: imprisonment for up to 5 years

(Title 9-10A)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The court shall fix the maximum term of imprisonment within the limits defined by statute and shall leave the minimum term to the discretion of the paroling authority.

b. Non-incarcerative Alternatives Available

The court may impose probation, fine, and/or restitution as provided by statute.

c. Required Sentence Justification

(1) All Cases

If the death penalty is imposed, the jury must specify aggravating circumstances justifying this sentence.

(Title 9-10A)*

3. Statutory Provisions for Sentence Review

A mandatory right to sentence review is provided only for death sentences. In such cases, the review is made by the state supreme court.

(Title 9-10A)*

4. Nature of Parole Decision-Making Authority

Within six months after the admission of an offender to a correctional facility, the Board of Prison Terms shall fix the duration of confinement not to exceed the maximum sentence fixed by the court. In some cases, the Board is limited by mandatory minimum sentences which must be served before the inmate is eligible for parole.

Upon parole, if parole conditions are violated, parole may be revoked and the duration of confinement extended, not to exceed the maximum term imposed by the court.

Offenders sentenced to life imprisonment are paroled after serving 20 years, minus good time credit.

(Title 9-10A)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Good time credit is fixed by the paroling authority and cannot exceed one-third of the offender's sentence.

(Title 9-10A)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

A first offender who commits a felony with the use of a firearm is subject to a five year mandatory minimum term which is non-suspendable.

A second offender who commits a felony with the use of a firearm is subject to a 7.5 year mandatory minimum term which is also non-suspendable.

If the individual is a third offender, he is subject to a 15 year minimum non-suspendable term.

b. Habitual or Repeat Offender

One prior felony conviction will result in the imposition of a ten year mandatory minimum term for the present offense.

Two prior convictions will result in a mandatory life imprisonment term for certain habitual criminals, as specified by statute.

c. Other

If the death penalty is requested by a prosecutor, a special sentencing hearing is held at which the jury determines if the aggravating and mitigating circumstances warrant imposition of the death sentence.

Rape in the first degree results in a three year mandatory minimum, non-suspendable sentence during which cannot be reduced by good time credit.

(Title 9-10A)*

* Washington Revised Annotated Code and Supplement, 1980-81.

West Virginia

Indeterminate/Statutory Minimum-Maximum

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

The penalties for felonies are distinguished by statute with specified minimum-maximum terms provided. In imposing a prison sentence for a felony, the court must impose a "general" (indeterminate) period of imprisonment according to the minimum-maximum terms set by law unless a maximum sentence of life imprisonment is required. In imposing a sentence, the court may designate a definite term which may be considered by the Board of Probation and Parole as the court's recommendations regarding the offender's sentence.

The exception to these sentencing provisions occurs in the case of armed robbery for which the judge must impose a definite sentence of not less than ten years and up to a maximum of life imprisonment. Eligibility for parole is determined after the offender has served at least one-third of this definite sentence.

(Title 61-11-16, 61-2-12)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

In certain cases, it is within the discretion of the judge as to whether or not to impose a prison sentence, suspended sentence, probation or a fine.

In cases where the judge sentences the offender to prison, the judge must sentence the offender to the statutory minimum-maximum terms set by law, except for those crimes which carry a statutorily provided maximum sentence or a mandatory life sentence.

Certain crimes, such as first degree murder, carry mandatory life sentences.

b. Non-incarcerative Alternatives Available

The court may order a fine, probation and/or suspended sentence, as provided by statute.

c. Required Sentence Justification

(1) All Cases

A written judgment of sentence is required in all felony cases.

(Title 61-2-2, 61-2-10, 61-11-16)*

3. Statutory Provisions for Sentence Review

No statutory provisions apply.

4. Nature of Parole Decision-Making Authority

The Board of Parole shall not consider any person for parole until he has served the minimum of the sentence provided by law and imposed by the court or, in the case of armed robbery, one-third of the definite sentence imposed.

An offender serving a life sentence following a first conviction, must serve ten years to be eligible for parole consideration, and following a second conviction, must serve 15 years. Following the first denial of parole, offenders are reconsidered at least once a year thereafter.

After the granting of parole, the period of parole shall be equal to the maximum term imposed by the court, less deductions for good conduct and work.

(62-12-13)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Every prison sentence, except a life sentence, is subject to reductions for good conduct as follows:

A term greater than 1 year and less than 3 years:

6 days per month served;

A term greater than 3 years and less than 5 years:

7 days per month served;

A term greater than 5 years and less than 10 years:

8 days per month served;

A term greater than 10 years:

10 days per month served.

(Title 28-5-27)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

The only statutory provision which exists relating to the use of a firearm applies to parole consideration. Anyone convicted of a felony involving a firearm must serve at least three years or the maximum term imposed, whichever is less, before becoming eligible for parole consideration.

b. Habitual or Repeat Offender

Upon conviction of a felony following a prior felony conviction, five years are added to the maximum sentence imposed by the court. Upon a third conviction, a life sentence is imposed. Anyone sentenced to life as an habitual offender must serve at least 15 years before becoming eligible for parole consideration.

In order to be sentenced as an habitual offender, a written information must be filed by the District Attorney with the Court prior to sentencing setting forth the previous convictions and sentences. Failure to file such as information invalidates any enhanced sentence imposed. The jury need not be informed of the habitual offender status of the offender.

(Title 61-11-18, 62-12-13)*

* West Virginia Code and 1981 Supplement.

Wisconsin

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Felonies are divided by statute into five classes:

- Class A: life
- Class B: up to 20 years
- Class C: up to 10 years
- Class D: up to 5 years
- Class E: up to 2 years

(Title 45-46)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge fixes a maximum term of imprisonment based on the limits provided by statute. The court may fix a term less than the maximum prescribed by law. The minimum term which can be imposed is one year. The Parole Board sets the release date within the maximum term imposed by the courts.

b. Non-incarcerative Alternatives Available

The court may order probation and/or fine as provided by statute.

c. Required Sentence Justification

(1) All Cases

No provision.

(2) For Deviations Only

No provision except in the case of the use of a firearm. The judge must justify in the record his reasons for not imposing the presumptive minimum term.

(Title 45-46)*

3. Statutory Provisions for Sentence Review

No provision.

(Title 45-56)*

4. Nature of Parole Decision-Making Authority

The Parole Board may parole any offender in the state prison when he has served one-half of the term imposed, or when he has served 20 years of a life sentence minus good time.

If the offender violates his parole, he may be returned to prison to serve the remainder of his term.

(Title 45-46)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

Prisoners who conduct themselves in a good manner, perform all duties, and obey prison rules are eligible for good time reductions as follows:

- During the 1st year: 1 month
- During the 2nd year: 2 months
- During the 3rd year: 3 months
- During the 4th year: 4 months
- During the 5th year: 5 months
- During the 6th and succeeding years: 6 months

Good time is forfeited for violation of prison rules.

In addition, for outstanding diligence of work and studies, a prisoner may receive one day for every six days of such behavior.

(Title 45-46)*

c. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offenses

a. Use of a Firearm

If a person commits a felony with the use of a firearm, the maximum penalty for that crime can be increased by not more than five years for a Class A, B or C felony.

For a Class D felony, the penalty can be increased to four years. For a Class E felony the penalty can be increased by up to three years. These sentence enhancements do not apply if the use of a firearm is an element of the crime.

b. Habitual or Repeat Offender

If an offender is a repeat offender, the maximum term for the crime committed may be increased by up to three years if the maximum sentence for the offense is one year. If the maximum sentence is more than one year and up to ten years, it can be increased by up to six years.

If the maximum term for the offense is ten years or more, the sentence may be increased by up to ten years.

Such prior convictions must have occurred within five years of conviction for the present offense.

(Title 45-46)*

* West's Wisconsin Statutes Annotated and Supplement, 1980-81.

Wyoming

Partially Indeterminate

1. Statutory Provisions Regarding Sentencing Classifications and Penalties

Other than offenses requiring a life sentence, the court shall not set a fixed term of imprisonment, but shall establish a minimum-maximum term of imprisonment within the limits provided by statute. The maximum term shall not exceed that fixed by law and the minimum shall not be less than the shortest term fixed by law for the offense. The minimum term shall not be less than one year.

The judge shall conduct a separate sentencing hearing in the case of a murder conviction.

(Title 6-7)*

2. Range of Allowable Judicial Discretion Regarding Sentence Imposition and Degree of Justification Required

a. Judicial Discretion

The judge fixes an indeterminate term of imprisonment, setting both minimum and maximum terms on the basis of the limits set by statute for each offense.

The Parole Board sets the actual release date within this indeterminate sentence range.

b. Non-incarcerative Alternatives Available

The court may suspend a sentence or order a fine or probation, as specified by statute.

c. Required Sentence Justification(1) All Cases

In the case of a death sentence, the jury or judge must state in writing the aggravating circumstances proved.

(Title 6-7)*

3. Statutory Provisions for Sentence Review

A death sentence receives automatic review by the Supreme Court of Wyoming. No other provision for sentence review are provided by statute.

(Title 6-7)*

4. Nature of Parole Decision-Making Authority

The Parole Board has the power to grant parole to any individual who has served the minimum term imposed by the court. The Parole Board fixes the terms and conditions of parole before release and the parolee must sign an agreement to these conditions before release.

If the offender violates the terms of parole he shall be returned to serve the remainder of the original sentence.

(Title 6-7)*

5. Statutory Provisions for Good Time and Other Sentence Reductions

The Parole Board has the power and authority to grant good time and special good time allowances. The granting of good time is, however, discretionary. Rules relating to good time are filed with the Secretary of State.

(Title 6-7)*

6. Statutory Provisions Relating to the Sentencing of Special Classes of Defendants or Offensesa. Use of a Firearm

A person who has in his possession a firearm during the commission of a felony shall be imprisoned for up to ten years in addition to the penalty imposed for the felony committed. Second offenders are imprisoned for up to 20 years in addition to the penalty for felony committed.

These provisions do not apply if the use of a firearm is an element of the principal felony.

b. Habitual or Repeat Offender

A person adjudged to have three prior felony convictions and convicted of a fourth felony shall be imprisoned for life.

(Title 6-7)*

* Wyoming Statutes Annotated and 1980 Supplement.

Appendices

Appendix A

Principal Background Literature Relating to the Study

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Appendix B

Acknowledgements

We are grateful to the individuals listed below who patiently discussed with us the sentencing provisions of their jurisdictions and reviewed draft sections of this report.

Ms. Claudine Allen
Maryland Administrative Office of the Courts

Ms. Linda Anderson
Minnesota Sentencing Guidelines Commission

Mr. Charles Clemens
Maryland Administrative Office of the Courts

Mr. Nathan Coats
Office of Attorney General, Colorado

Mr. Charles Day
Office of the State's Attorney, Maryland

Mr. Sam Esquilbel
New Mexico Board of Parole

Mr. Jack Fahy
Office of the Attorney General, New Jersey

Mr. Frederick J. George
Office of the Attorney General, West Virginia

Mr. Sterling Gray
District Attorney's Office, Tennessee

Mr. David Halperin
Administrative Office of the Courts, California

Ms. Marcell Hooks
North Carolina Parole Commission

Mr. Charles Leadbetter
Office of Attorney General, Maine

Mr. David Leary
Department of Corrections, Massachusetts

Mr. Keith Majors
Kansas Adult Authority

Mr. Crane McClennen
Office of the Attorney General, Arizona

Mr. John McClosky
Sentencing Guidelines Commission, Pennsylvania

Mr. Johnny McCollum
Head of Clemency, Texas

The Honorable E. Leo Milonas
Deputy Chief Administrative Judge, New York, New York

Mr. Richard S. Morelli
Pennsylvania Commission on Crime and Delinquency

Mr. Scott Murphy
Assistant State's Attorney, Connecticut

Ms. Barbara Oak
Department of Corrections, Iowa

Mr. Kenneth Plante
Office of the State Court Administrator, Florida

Mr. Michael Reid
Department of Correction, Missouri

Ms. Julie Rorie
Office of the State Court Administrator, Oklahoma

Mr. Robert Squires
State Court Administrator's Office, Vermont

Mr. Andy Surlis
Office of the State Court Administrator, South Carolina

Mr. Linn Thomas
Office of Attorney General, Idaho

Ms. Mary Troling, Assistant Attorney General
Office of Attorney General, Montana

Mr. Robert L. Trotter
Alabama Parole Board

Mr. Richard Wagner
Board of Parole Standards, Delaware

Mr. Joseph Wannemacher
Office of the Attorney General, Maine



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Joseph A. Trotter, Jr., Director
David J. Saari, Associate Director
Caroline S. Cooper, Senior Staff Attorney
Hon. Orm W. Ketcham, Senior Fellow
Leon G. Leiberg, Senior Fellow
Joyce Dix, Administrative Assistant

END