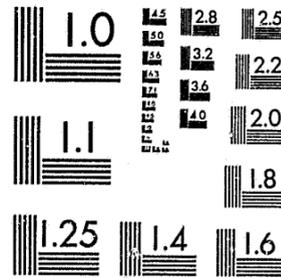


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STATE OF ARKANSAS
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ACQUISITIONS

DISCUSSION OF DETERMINATE AND
 INDETERMINATE SENTENCING PROCEDURES
 AND LAWS

STAFF REPORT #80-34

DATE: November 3, 1980

A REPORT PUBLISHED
 BY
 THE BUREAU OF LEGISLATIVE RESEARCH

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SCOPE

This report was requested by legislative members of the Subcommittee on Criminal Justice of the Arkansas Legislative Council which was created pursuant to Interim Resolution 79-64 by Senator Knox Nelson to study various aspects of the Arkansas criminal justice system.

INTRODUCTION

This report contains a general discussion of indeterminate and determinate sentencing as applied to current state law in the various states. One section describes the California Determinate Sentencing Act of 1976, an innovation in determinate sentencing law, and a preliminary findings report is noted on the effects of the law.

The Arkansas law on sentencing (indeterminate), imprisonment, and parole of convicted felons is outlined. The Arkansas Attorney General's proposal for changes in the sentencing system are also noted in this report.

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Prepared By
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THE BUREAU OF LEGISLATIVE RESEARCH
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REFORMING SENTENCING PROCEDURES

1 Indeterminate Sentencing

2
3 Indeterminate sentencing laws are the most common sentencing laws in
4 the United States. In indeterminate sentencing, the "sentencing court is
5 allowed discretion in determining whether or not a sentence should be
6 imposed and, if so, the length of sentence in light of the crime."¹ For
7 instance, if state law provides for a sentence of "zero to 20 years, the
8 actual sentence imposed could be zero to 20 years, 10 to 20 years, five years,
9 or any combination within lawful limits."² Also, the parole board has dis-
10 cretion in determining the amount of time served.³

11 Some problems caused by indeterminate sentencing are:

- 12 "1. Indeterminate sentencing often results in unwarranted
13 disparities in sentences among offenders who commit
14 similar crimes. Sentencing should be more uniform to
15 ensure more fairness and equitability.
16 2. Punishment should reflect the severity of the crime.
17 Too much discretion does not ensure that offenders
18 will be punished appropriately. Further, discretion
19 permits subjective and often unguided decisions to
20 be made by judges and parole boards regarding the
21 length of time to be served.
22 3. If decision-making is widely dispersed, accountability
23 is diluted--sometimes lost.
24 4. Under indeterminate systems, the inmate has no idea of
25 the actual time that he or she will serve.
26 5. Sentence discrepancy creates resentment among inmates
27 and contributes to institutional problems."⁴

28 Because of these problems and criticisms of indeterminate sentencing, a few
29 states have adopted determinate sentencing laws. Arkansas sentencing laws
30 are indeterminate in nature.

31 Arkansas Law. The following information pertains to Arkansas law on
32 sentencing, imprisonment, and parole of convicted felons.

33 The Arkansas Criminal Code (Act 280 of 1975, as amended) classifies
34 felonies as Capital Felony Murder, Class A, Class B, Class C, Class D and
35 Unclassified. The penalty for Capital Felony Murder is death or life
36 imprisonment without parole. The permissible term of imprisonment for a
Class A felony is not less than five (5) years nor more than fifty (50) years,
or life; for a Class B felony not less than three (3) years nor more than
twenty (20) years; for a Class C felony not less than two (2) years nor more

1 than ten (10) years; for a Class D felony not exceeding five (5) years; and
2 with regard to an unclassified felony, whatever penalty is specified in the
3 statute defining the felony.

4 Section 1 of Act 228 of 1953, as amended, and Section 1001 of Act 280
5 of 1975 both provide for increasing the term of imprisonment for habitual
6 offenders.

7 Section 1 of Act 78 of 1969, as amended, provides (in the discretion
8 of the court) an additional imprisonment not to exceed fifteen (15) years
9 when a person convicted of a felony employed a firearm in the commission of
10 the felony or escape from such felony.

11 Except for persons previously convicted of two or more felonies, and
12 persons convicted of capital murder, 1st degree murder, 2nd degree murder,
13 1st degree rape, kidnapping or aggravated robbery, the court has the power
14 to suspend the imposition of imprisonment. Such authority was granted by
15 Section 1 of Act 158 of 1945, Section 1 of Act 818 of 1973, Section 4 of
16 Act 378 of 1975, as amended, and Section 1201 of Act 280 of 1975, as amended.
17 As an alternative to imprisonment, the court may put the offender on probation
18 or divert the offender to an alternative service program. Once an offender
19 is in the custody of the Department of Correction, the actual length of
20 imprisonment, as opposed to the term of imprisonment contained in the
21 sentence, depends on several factors. Article 6, Section 18 of the Arkansas
22 Constitution empowers the Governor to grant pardons, reprieves and commu-
23 tations of sentences. Therefore, the Governor can reduce the sentence to
24 any term of years or pardon an offender and thereby grant immediate release
25 from imprisonment. The length of imprisonment will depend upon the amount
26 of meritorious good time earned by the inmate, in that Section 2 of Act 510
27 of 1971 provides that not only is meritorious good time used in computing
28 parole eligibility but it also reduces the term of imprisonment. The Board
29 of Correction is given the authority to promulgate rules and regulations
30 pertaining to the award of meritorious good time within the statutory maximum
31 of thirty (30) days good time for each month served in an institution main-
32 tained by the Department of Correction.

33 The length of imprisonment of an inmate in an Arkansas institution
34 maintained by the Department of Correction will also depend on the parole
35 eligibility of the inmate. Act 93 of 1977 (applicable to persons who
36 commit felonies after April 1, 1977) classifies inmates as 1st, 2nd, 3rd and

1 4th offenders, and provides a parole eligibility formula of each classification
2 of inmate. Under this Act, any first offender under the age of twenty-one
3 (21) is eligible for parole at any time, unless a minimum time to be served
4 is imposed by the sentencing court. Such minimum time to be no more than
5 one-third (1/3) of the total sentence. In the event such first offender is
6 sentenced to a minimum time, he is eligible for parole after serving the
7 minimum time with credit for good time allowances. A first offender over
8 twenty-one (21) years of age is eligible for parole after serving one-third
9 (1/3) of his sentence with credit for good time, unless such first offender
10 used a deadly weapon in commission of the crime, in which case he would be
11 eligible for parole after serving one-half (1/2) of his sentence with good
12 time credit. A third offender would be eligible for parole after serving
13 three-fourths (3/4) of his sentence with good time credit, and persons
14 imprisoned for the fourth or subsequent time are not eligible for parole, but
15 good-time credit applies.

16 17 Determinate Sentencing

18
19 Determinate sentencing is "designed to reduce disparities and arbitrary
20 decision-making and to shape the punishment to more closely fit the crime."⁵
21 The following thirteen states have enacted determinate sentencing laws to
22 date: Alaska, Arizona, California, Colorado, Illinois, Indiana, Maine,
23 Minnesota, New Jersey, New Mexico, North Carolina, Pennsylvania, Tennessee
24 (only Class X offenses). The "major objectives surrounding the issues of
25 determinate sentencing are: (1) equity and fairness, and (2) certainty of
26 punishment."⁶ This reduces judicial discretion because it statutorily
27 establishes a certain length of time for a specified crime an offender must
28 serve in a correctional facility thereby limiting flexibility. Judges still
29 maintain the discretion to grant probation as an alternative to incarceration.

30 There are three categories of determinate sentencing laws. Appendix I
31 reflects the various aspects of determinate sentencing laws in 13 states.

32
33 Determinate-Discretionary.⁷ Indiana, Illinois, and Maine utilize the
34 determinate-discretionary system which establishes a range

35 "...for each class of crime but is usually much narrower
36 than that under the indeterminate system. The sentencing

1 authority does have discretion to select any sentence
2 within the range, but cannot go outside the range. Any
3 sentence imposed must be for a fixed term. Determinate
4 sentences are not mandatory for most offenses, allowing
5 discretion for probation or alternatives to prison."⁸

6 Presumptive. Arizona, California, Colorado, and New Mexico operate under
7 presumptive laws which set specific sentences by law

8 "...for each category of crime, and while discretion is
9 not totally removed, sentencing is guided. Fixed sentences
10 can be increased for aggravating factors or decreased for
11 mitigating factors. If imprisonment is appropriate, the
12 sentencing authority must impose the sentence prescribed
13 by law for that particular offense."⁹

14 "Examples of aggravating circumstances include:

- 15 1. The defendant inflicted or threatened bodily injury.
- 16 2. The defendant was the main perpetrator of the crime.
- 17 3. The crime involved several victims.
- 18 4. The defendant caused excessive property damage or loss.

19 Examples of mitigating factors include:

- 20 1. The defendant has no prior convictions.
- 21 2. The defendant committed the crime under duress.
- 22 3. The defendant was not the major perpetrator of the crime.
- 23 4. The defendant has made restitution to the victim.
- 24 5. The defendant lacked sound judgment."¹⁰

25 California. The California Uniform Determinate Sentencing Act of 1976
26 [Chapter 1139 of California Laws of 1976] became effective July 1, 1977.
27 This legislation gives the judge three statutory sentence choices for each
28 crime. For instance, robbery is punishable by imprisonment for two (2)
29 years, three (3) years or four (4) years. The California Judicial Council
30 is required by the new act to promote uniformity in sentencing by the
31 adoption of rules providing criteria for the consideration of the trial
32 judge at the time of sentencing regarding the court's decision to (a) grant
33 or deny probation; (b) impose the lower or upper prison term; (c) impose
34 concurrent or consecutive sentences; (d) consider an additional sentence for
35 prior prison terms; or (e) impose an additional sentence for being armed
36 with a deadly weapon, using a firearm, or excessive taking or damaging, or
the infliction of great bodily injury. Good time and participation credit
is authorized not to exceed one-half (1/2) of the sentence. An inmate is
paroled after serving his sentence less good time, parole supervision to

1 last no longer than one year and provision is made for waiving parole
2 supervision altogether.

3 Studies are in progress to determine the effects of the California law.

4
5 According to a publication entitled Determinate
6 Sentencing in California, prepared by the Council
7 of State Governments, certain trends have evolved
8 since the adoption of the California law. First,
9 more offenders are being sentenced to a prison as a
10 result of a new law, although it should be noted that
11 no determinate sentencing law has any effect on who
12 does or does not go to prison. Second, there is less
13 apparent sentencing disparity among similarly situated
14 offenders; and third, larger prison populations will
15 likely result in higher costs. . . . [F]urther study
16 is required to monitor the full effects of this
17 particular law and confirm preliminary findings. ¹¹

18 Arkansas Attorney General Proposal. The Arkansas Attorney General
19 identifies the "two greatest problems of the Arkansas sentencing system...
20 [as] (1) widespread sentence disparity, and (2) premature release of persons
21 convicted of violent crimes against persons."¹²

22 Act 93 stiffened the Arkansas law on parole eligibility for repeat
23 felony offenders. This is resulting in repeat offenders serving longer terms
24 and therefore, producing crowding at the state correction facilities, since
25 an average of 35 percent of the inmates are repeat offenders.

26 The Attorney General proposes to focus on stiffer penalties for the
27 violent offenders by creating a class of felonies containing aggravated
28 robbery, rape, kidnapping, and arson for profit to be classified by law as
29 "Class Y." "These crimes . . . [would] carry a determinate penitentiary
30 sentence."¹³ According to Department of Correction officials, in 1979, 57.2%
31 of the inmate population were violent offenders. ¹⁴ Persons convicted of
32 these felonies would not be eligible for probation under the Attorney General
33 proposal. The Attorney General also proposes modifications of the Class A
34 through D felonies as reflected in the following chart:

1 TABLE OF PROPOSED FELONY SENTENCES

2 FELONY CLASS	3 A FIXED TERM 4 WITHIN THIS RANGE	5 PAROLE ELIGIBILITY	6 EXTENDED 7 TERM
8 Murder	9 25-40, 10 or life	11 After 10 years 12 Actual Time	13 40-80, 14 or life
15 Class Y	16 10-30	17 Half of sentence 18 Not less than 5 19 Years actual time	20 20-60
21 A	22 6-25	23 1/3 of sentence 24 Not less than 2 25 Years actual time	26 12-50
27 B	28 5-15	29 1/3 of sentence 30 not less than one 31 year actual time	32 10-30
33 C	34 4-8	35 1/3 of sentence 36 Not less than one year actual time	None
D	3-6	1/3 of sentence Not less than one year actual time	None

Source: Untitled packet of proposed legislation offered by the Office of the Attorney General, 1980.

Under the Attorney General proposal,

Sentences to extended terms may be imposed when: (1) the court finds that the defendant has previously been convicted of two or more violent offenses, or (2) the court finds that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.¹⁵

A person convicted of a Class Y offense who has no prior convictions of rape, aggravated robbery, kidnapping, or arson . . . [would] be eligible for parole consideration upon the completion of one-half of his sentence less good time, but in no event . . . [would] be released on parole prior to having actually served five years in the Arkansas Department of Correction.

1 A person convicted of a Class Y offense, who has a prior
2 conviction of rape, aggravated robbery, kidnapping or
3 arson [would] become eligible for parole upon serving 3/4
4 of his sentence less good time.¹⁶

Persons under age 21 years convicted of Class B, C or D felonies . . . [would] be eligible for immediate parole release. The Parole Board . . . [would] be given power to discharge and release a parolee from parole and his commitment to the Department of Correction, when it determines that he is likely to remain at liberty without committing another offense. A parolee must have successfully completed two calendar years under supervision, before he can be considered for discharge.

The good-time statutes now in effect will be unchanged.¹⁷

The Attorney General is proposing that

Ark. Stat. Ann. 41-1201 et seq, Chapter 12, Suspension on Probation . . . be repealed. Probation . . . [would] be a sentence imposed by the trier of fact. A condition of probation, available for imposition in appropriate cases, . . . [would] be a term in the county jail not to exceed 6 months, or periodic imprisonment in the county jail not to exceed 1 year.¹⁸

The Department of Correction estimates that the average length of confinement in state correctional facilities is 2.5 years for Cummins inmates and 3.5 years for Tucker inmates. In arriving at this estimate, the inmates serving life sentences without parole were excluded from any sample taken. Correction officials pointed out that these figures are based on a 200 inmate sample out of the total 2,785 population. The Correction Department is presently compiling data to try to determine the impact on the inmate population under the Attorney General's proposal by utilizing data on each inmate as opposed to a sample. The Correction Department estimates that this data will be complete in December.

Other Attorney General Proposals relating to Sentencing. The Attorney General has noted three other problems and solutions to sentence related practices.

(1) There "is no set method for determining the number of prior incarcerations and convictions . . . an inmate has received."¹⁹ Assuming that the Correction Department obtains this information from police rap sheets and

1 the FBI, the department does not always receive information on whether the
2 person was convicted of a felony or was incarcerated for such felony. The
3 Attorney General points out that the rap sheet does not indicate whether the
4 person was represented by counsel. As a solution to these problems, the
5 Attorney General suggests that the Department of Correction receive certified
6 copies of prior judgments and commitment orders. This would ensure that the
7 convicted and sentenced person would serve the appropriate time.

8 (2) The method by which a recidivist is charged as a habitual offender
9 is through a bifurcated trial, whereby the jury determines the guilt and
10 then determines prior felony convictions. The Attorney General suggests
11 that the judge, out of the presence of the jury, determine whether a person
12 is a habitual offender, and that he instruct the jury on the sentence range
13 based on the offense and the prior number of convictions.

14 (3) Presently, when a person has been convicted of capital murder and
15 has been sentenced by the trial court to a specified date to be electrocuted,
16 the execution date is not carried out because of a pending appeal to the
17 Arkansas Supreme Court. The Governor must then set the new execution
18 date according to Ark. Stats. Ann. 43-2623. The Attorney General points
19 out that out of 39 states having a death penalty, only 3 of them require the
20 Governor to set the new date of execution. The remaining 36 states require
21 the execution date to be set by the trial court or the Supreme Court. The
22 Attorney General suggests that this responsibility be taken away from the
23 Governor and placed with the trial court.

24
25 Sentencing Guidelines. Sentencing guidelines have been created in
26 Minnesota and Pennsylvania.

27 "Guidelines are developed to consider both the offense
28 and the individual characteristics of the offender.
29 The trial court is not bound by the suggested
30 guidelines; however, it is mandated to consider the
31 guidelines. To assure that the guidelines will be
32 adhered to, any deviation from them must be accompanied
33 by a written statement. The defendant or the state
34 is allowed to appeal any sentence imposed or stayed.
35 Guidelines also designate who should and should not
36 be incarcerated." 20

34 Minnesota was the first state to establish sentencing guidelines in
35 1976. S.F. No. 65, Chapter No. 723 of the Minnesota State Statutes created
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"The Sentencing Guidelines Commission to promulgate
advisory guidelines for trial court judges. The nine-
member Commission, appointed to four-year terms, is
to prepare and submit guidelines to the legislature
by January 1, 1980. The legislature retains authority
to amend the guidelines." 21

The Commission is also charged with the responsibility of "studying the impact
of the guidelines" 22 and formulating guidelines on judicial decision-making
on whether an offender can be granted parole or sentenced to a correctional
facility. Other responsibilities of the Minnesota Sentencing Guidelines
Commission include:

- (1) making recommendations for change in criminal
procedures and the State Criminal Code;
- (2) studying behavior of judges;
- (3) studying bed capacity in the state correction system; and
- (4) studying decision-making of parole authorities. 23

The State of Oregon passed "legislation establishing a committee to
recommend specific ranges of time to be served for different offenses and
to produce guidelines to govern [parole] release decisions." 24

Model Sentencing and Corrections Act

The Model Sentencing and Corrections Act drafted by the Uniform Law
Commissioners and approved at the annual conference in 1978 was the result
of several proposals from different individual groups and requests an
abandonment of the traditional practice in sentencing. The traditional
approach to sentencing is to tailor the sentence imposed in each case to the
needs of the offender and of society. This approach, which until now has
had universal acceptance, was the basis of recommendations by the National
Advisory Commission on Criminal Justice Standards and Goals and the American
Bar Association.

In the prefatory notes on the Model Sentencing and Corrections Act, it
is noted that abandonment of the traditional practice in sentencing
recognizes that individualized sentencing had failed and should be replaced
by a system that provides a higher degree of equal treatment. The
indeterminate sentence with parole was replaced with a flat, determinate
sentence, and the discretion to select a particular sentence was severely
restricted. Sentences were no longer to reflect the rehabilitative potential

1 of the defendant, but rather to insure a punishment justly deserved for the
2 offense committed.

3 The Act seeks to enhance the rehabilitative potential of correctional
4 environments by authorizing a wide variety of programs and giving offenders
5 a voice in and a greater incentive for their own self-improvement.

6
7 SUMMARY

8
9 Most states employing the indeterminate sentencing method allow the
10 judge to impose a sentence within the minimum and maximum
11 term allowed by law and a parole board or agency later determines a release
12 date. The idea is to tailor the punishment to the crime with the intent of
13 rehabilitating the offender and reorienting them to society.

14 Since the early 1970's, in light of the increasing crime rate, some
15 states have examined their correction goals and determined that certainty of
16 punishment and equity and fairness are more important and they have enacted
17 determinate sentencing laws consistent with these re-established goals.
18 Determinate sentencing is designed to narrow judicial discretion in
19 sentencing and its goal is definite punishment for certain crimes within
20 specified, more narrow limits. But these differ in their treatment of
21 sentencing structure, firearm use, repeat offenders, sentencing authority,
22 sentence review, parole decision-making and review, and good time.

23 Current Arkansas sentencing law is indeterminate in nature, and the
24 Attorney General is recommending changes in both the sentence structure and
25 parole eligibility laws. He is recommending narrower limits on fixed terms
26 and establishing a special class and extended terms for violent offenders.
27 The Department of Correction is gathering data to determine the effect of
28 the Attorney General proposal on the inmate population.

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FOOTNOTES

¹NCSL, "Sentencing Reform," C J Monitor, Vol. II; No. III, April, 1979, p. 1

²Mary Fairchild, Determinate Sentencing Laws, Prepared by the Criminal Justice Project of the National Conference of State Legislatures, Lanny Proffer, Director, September, 1980, p. 1.

³NCSL, "Sentencing," C J Monitor, p. 1.

⁴Fairchild, Determinate, p. 2.

⁵NCSL, "Sentencing," C J Monitor, p. 3.

⁶Fairchild; Determinate, p. 3.

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰Ibid., p. 4.

¹¹Ibid., p. 7.

¹²From untitled packet of proposed legislation by the Office of the Attorney General, 1980.

¹³Ibid.

¹⁴This percentage includes both men and women inmates. Violent offenders include those convicted of murder, aggravated robbery, rape, and kidnapping.

FOOTNOTES

¹⁵Arkansas Attorney General untitled packet.

¹⁶Ibid.

¹⁷Ibid.

¹⁸Ibid.

¹⁹Ibid.

²⁰Fairchild, Determinate, p. 4.

²¹NCSL, "Sentencing," C J Monitor, p. 2.

²²Ibid.

²³Ibid.

²⁴Ibid, p. 3.

APPENDIX I

Source: The material in this Appendix was copied from a NCSL project written by Mary Fairchild, Determinate Sentencing Laws: A Comparison of the Provisions of State Determinate Sentencing Laws, The Criminal Justice Project of the National Conference of State Legislatures, September, 1980, pp. 9-22.

	ALASKA	ARIZONA
Sentencing Structure	A sentence range is established for Class A, B and C felonies — murder and kidnapping. Each range includes a maximum sentence limit; a minimum term is established for murder and kidnapping. The court must impose a definite term within the sentence range for the felony class. Presumptive terms are established in each class for prior convictions and within Class A for the use of a firearm. Aggravating and mitigating factors are listed and may increase or decrease the presumptive terms within the limits allowed by law. If the sentencing court finds that the presumptive term is not appropriate or unjustice will result in cases where aggravating and mitigating circumstances are not considered, the court must enter such findings in the record.	Non-capital offenses. Presumptive sentence established by law for each class of offense, felony and misdemeanor. First time conviction for a Class 2 or 3 felony may be increased up to 100 percent for aggravating circumstances or reduced by 25 percent for mitigating circumstances; first time convictions for Class 4, 5 or 6 felonies may be increased up to 25 percent or reduced by 50 percent. Factual findings and reasons for sentence alterations must be stated in the record by the trial judge.
Use of a Firearm	Use of a firearm or infliction of serious injury in the commission of a Class A offense results in a presumptive term of six years for a first offense other than for manslaughter. This compares to the ordinary range for a Class A felony of a definite term, selected by the judge not to exceed 20 years.	Use of a deadly weapon or dangerous instrument or the intentional infliction of serious injury in the commission of a felony results in a mandatory fixed sentence. Prior convictions of a similar nature result in a longer sentence. A person sentenced under this section is not eligible for any type of release until a minimum amount of time is served. Minimum time served and the actual sentence vary depending on the class of the offense. The sentence may be altered depending on aggravating and mitigating circumstances.
Habitual or Repeat Offenders	A presumptive term is established within the sentence range for Class A, B and C felonies for prior felony convictions that have occurred within seven years of the present offense. Different presumptive terms are applied to second and third felony convictions with each class, and vary depending on the felony class.	Previous felony convictions result in a mandatory sentence. Length of sentence and minimum time to be served before any type of release differ depending on the class of the present offense and the number of prior convictions.

	ALASKA	ARIZONA
Sentencing Authority	Trial Judge.	Trial Judge.
Sentence Review	Creates a three-judge panel in the superior court to review where the sentencing court finds that injustice will result because of failure to consider aggravating and mitigating circumstances or because of imposition of the presumptive term. Upon majority agreement, the panel may resentence the defendant or remand the case.	No specific provision.
Parole Decision-making	Every prisoner must serve at least 1/3 of the sentence imposed or the mandatory minimum where required by law before being released on parole. Discretion is then left to the parole board.	Limited discretion. Earliest parole eligibility occurs when half the sentence has been served, unless the law requires 2/3 of the sentence to be served before eligibility. Board can deny parole if it appears that the applicant will violate the law or is dangerous. Every person who has served one year is to be temporarily released 180 days prior to expiration of the actual sentence. Board has the power to grant absolute discharge.
Parole Supervision	No specific provision.	Department of Corrections retains control over parolee until the term of the sentence expires. Violations of parole result in a return to custody until the sentence expires.
Good time/ Earned time	One day is awarded for every three days of good behavior.	Earned credits are accrued for those prisoners who are granted class one eligibility status and are granted at a rate of one day for every two days served. However, if the sentence prohibits release until 2/3 of the sentence is served, earned credits are granted at a rate of one day for every three days served. Earned credits reduce the term of imprisonment but do not reduce the sentence for the purpose of eligibility.

	CALIFORNIA	COLORADO
Sentencing Structure	Applies to most felonies other than murder and kidnapping which carry life sentences. Most felonies carry a choice of three terms: low, middle and high. The judge must impose the middle term unless there are aggravating or mitigating circumstances. In addition to the base term, longer sentences termed "enhancements" are imposed for prior convictions, certain sex offenses, or if the crime was committed with a weapon or if great bodily harm occurred.	Establishes a presumptive range for each of the 3 classes of felonies. Class I felonies are unaffected by the new sentencing scheme & encompass only the crimes for which the punishment is life imprisonment or death. Absent extraordinary aggravating or mitigating circumstances, the maximum sentence for the commission of a Class 2 felony is 12 yrs., while the maximum sentence for a Class 3 felony is 1 yr. The sentencing court is to sentence within the appropriate presumptive range for a fixed term. A sentence within the range must take into account: the nature & elements of the offense; the character & record of the offender; & mitigating & aggravating circumstances. If the court finds extraordinary mitigating or aggravating circumstances, it may impose a sentence which is lesser or greater than the presumptive range, but the sentence cannot be more than twice the maximum or less than 1/4 the minimum term authorized. When a court does impose a sentence in an extraordinary case, it must make written findings detailing the extraordinary circumstances justifying the variance from the presumptive range.
Use of a Firearm	Results in a one-year sentence enhancement if the person was armed with a firearm or a co-hort in the crime was armed with a firearm. A two-year enhancement is applied if the person uses a firearm in the commission of the crime. This section does not apply if a firearm is an element of the offense.	Existing law is not affected. Existing law provides that a mandatory minimum range is to be imposed for the use of a deadly weapon in the commission of certain crimes.
Habitual or Repeat Offenders	Violent present offenses plus violent prior convictions committed within 10 years where a prison term was served results in a 3-year enhancement. Other prior convictions committed within five years where a prison term was served result in a one-year enhancement.	Existing habitual offender statute is not affected. Existing law provides that 2 prior convictions within 10 years of the present offense result in a term of imprisonment of not less than 25 years or more than 50 years for certain felonies. Three or more prior convictions result in a term of life imprisonment.
Sentencing Authority	Trial Judge.	Trial Judge.
Sentence Review	Sentence is reviewed by parole authority no later than one year after the sentence is imposed, and parole may recommend that the offender be resentenced if parole authority determines the sentence is disparate.	When the sentence imposed is lesser or greater than the presumptive range, the court of appeals automatically reviews the propriety of the sentence in a non-adversary proceeding. The court of appeals may affirm the sentence or remand the case for resentencing.
Parole Decision-making	Authority to waive parole supervision and to set conditions and length of parole up to maximum period provided by law.	A one-year period of parole is included for each felony classification to be supervised by the division of adult services in the department of corrections. Conditions of parole continue to be established by the state board of parole.
Parole Supervision	See above.	See above.
Good time/ Earned time	Sentences may be reduced by 1/3 for participation in prison programs and if conduct is consistent with the rules of the institution.	15 days a month for substantial conformance with institution rules and regulations. The good time is to vest quarterly. Earned time, not to exceed 15 days for every 6 months of incarceration, may be deducted from the sentence for outstanding progress in the categories of work & training, group living counseling & meeting established goals & programs.

	ILLINOIS	INDIANA
Sentencing Structure	Establishes different sentence ranges for murder, Class X felonies and for each of four felony classes. A sentence imposed must be determinate within the range specified for the particular offense. Class X felonies include aggravated kidnapping, rape, deviate sexual assault, heinous battery, armed robbery, aggravated arson and treason. The sentence range for Class X felonies is not less than six and not more than 30 years imprisonment. Aggravating and mitigating factors can be considered, and the court is to include the reasons for imposing a particular sentence in the record. If aggravating factors are found, a sentence may be imposed from a set of extended ranges established by law for different offenses. The extended range for a Class X offense is 30-60 years imprisonment.	Established fixed terms within each of four felony classes and for murder. Fixed terms can be increased for aggravating circumstances or decreased for mitigating circumstances within the limits allowed by law for each felony class.
Use of a Firearm	Use of certain dangerous weapons in the commission of any felony is a Class X offense.	No specific provision.
Habitual or Repeat Offenders	A person twice convicted of specified crimes: treason, murder, rape, deviate sexual assault, armed robbery, aggravated arson, or aggravated kidnapping for ransom, and is thereafter convicted of any one of these crimes committed after the two prior convictions, receives mandatory life sentence and is not eligible for parole. A person convicted of a Class 1 or Class 2 felony who has 2 prior Class 1 or Class 2 convictions is sentenced as a Class X offender. These sections are not retroactive prior to the effective date of the act.	For two prior unrelated felony convictions, an additional fixed term of 30 years is to be imposed. However, if 10 or more years have elapsed since discharge from the sentence for the last felony conviction, the court may subtract up to 25 years from the additional fixed term. If a reduction is authorized, the court may consider aggravating or mitigating circumstances to determine if a reduction should be granted and what the reduction should be (amended 1980).
Sentencing Authority	Trial Court.	Trial Court.
Sentence Review	Upon appeal, the appellate court may modify a sentence imposed where appropriate.	No specific provision.
Parole Decision-making	Abolishes Parole and Pardon Board and creates the Prisoner Review Board. Retains power of parole only over persons sentenced to an indeterminate term before the new act. Establishes convictions for parole and mandatory release; reviews revocation or suspension of good conduct credits over 30 days in cases of prisoner misconduct.	Board has power to revoke parole, to reinstate parole, and to insure discharges from parole. Offender must serve the length of the fixed sentence less credit time before being released on parole.
Parole Supervision	Every sentence must include the mandatory supervised release term specified by law for each type of felony offense.	Supervision is limited to the amount of time before the fixed term expires, not to exceed one year.
Good time/ Earned time	Except for life sentences; good time credit, which accrues on a monthly basis, is awarded one day for every one day served and is to be deducted from the sentence. The Director of the Department of Corrections may award up to 90 days additional credit for meritorious conduct. No prisoner can be penalized more than one year of credit for any one infraction.	Establishes three classes of credit time. All persons are initially assigned to Class I and may be reassigned to a lower class for institutional violations. Credit time accrues as follows: Class I, 1 day for every 1 day served; Class II, 1 day for every 2 days served; and Class III, no credit time.

	MAINE	NEW JERSEY
Sentencing Structure	Murder results in a minimum prison term of 25 years. Other crimes are divided into five classes and a maximum term is established for each class. Maximum terms increase according to the seriousness of the offense. The court is mandated to set a definite period of imprisonment not to exceed the maximum amount.	A sentence range is established for each of four degrees of crimes. The sentence imposed must be a fixed term within the appropriate range and the court is to state on record the reasons for imposing a particular sentence. For first and second degree crimes, the court may fix a minimum term within the limits of law during which the person is not eligible for parole. An extended sentence range for murder, first, second and third degree crimes is also established and may be imposed if certain circumstances exist. Again, the court may fix a minimum term within the limits of the law. Further, the law establishes a presumptive term for each of the four degrees of crimes to be imposed if a sentence of imprisonment is proper. The sentence can be increased for aggravating factors. If mitigating factors outweigh aggravating factors in first or second degree crimes, the court may sentence the defendant to a term that is one degree lower. Such sentence is not final for 10 days in order to permit appeal by the prosecution.
Use of a Firearm	If the State proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon, the sentencing class is one class higher. Minimum terms of imprisonment are established for Class A, B, C or D crimes committed with the use of a firearm. Sentences imposed under this section cannot be suspended.	No specific provision.
Habitual or Repeat Offenders	No specific provision.	Two previous felony convictions within 10 years of the present offense are the criteria for imposing a sentence within the extended range.
Sentencing Authority	Trial judge.	Trial court.
Sentence Review	No specific provision.	No specific provision.
Parole Decision-making	Removed. Prisoners are to be unconditionally released at the expiration of the term, less good time.	Must compute a parole eligibility date within 90 days after the sentence begins. Most inmates become eligible for parole after serving nine months of the sentence; exceptions are made for special offenders. Power to increase eligibility date for infractions and decrease eligibility date for exceptional progress. Inmates to be released at that date for exceptional progress. Inmates to be released at that date unless the inmate is likely to commit a crime. Inmates are never eligible for parole before serving the minimum term, when imposed.
Parole Supervision	Removed.	For most inmates, parole supervision amounts to the balance of the maximum term, less good time, and/or earned time.
Good time/ Earned time	Prisoners sentenced to a term over six months are awarded good time credits at a rate of 10 days for every month served. Sentences six months or less are awarded three days good time for every month served. An additional two days a month may be awarded for work or other duties.	For first offenders, good time may be awarded at a varying rate which starts at one-fifth of the original sentence for a one-year sentence, but which increases for longer sentences. Earned time never exceeds one day for each five days of productive occupation.

	MINNESOTA	PENNSYLVANIA
Sentencing Structure	Effective May 1, 1980. Establishes a sentencing commission to develop advisory sentencing guidelines for use by the district court. Guidelines to establish: (1) circumstances where imprisonment is proper, and (2) a presumptive, fixed sentence schema. The guidelines may provide a 15 percent increase or decrease in the presumptive sentence. If the court deviates from the presumptive sentence, the judge is required to make written findings of fact regarding the alteration.	Establishes the Pennsylvania Commission on Sentencing to develop advisory guidelines to be used by the court to determine the appropriate sentence for felonies and misdemeanors. The guidelines must: (1) specify a range of sentences for different degrees of crimes; (2) specify a range of sentences of increased severity for repeat offenders or for crimes committed with the use of a deadly weapon; and (3) prescribe variations from the range of sentences for aggravating and mitigating circumstances. The judge must indicate in a written statement the reasons for any sentence imposed. The guidelines become effective 90 days after they are submitted to the legislature unless, by concurrent resolution, the legislature rejects them in their entirety.
Use of a Firearm	Present law not affected which provides that minimum terms established for certain crimes in which a firearm was used in the commission of the offense. (See MN Stats. 609.11)	(See above; also included in the interim guidelines described below.)
Habitual or Repeat Offenders	Prior felony convictions for certain 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 law for the present offense.	A minimum term of four years imprisonment is established as an <u>interim</u> guideline to be considered by the court for some repeat offenders. The guideline applies to certain crimes, particularly crimes against the person, and is to be used when the offender has prior convictions for similar crimes.
Sentencing Authority	Trial judge. Separate sentencing hearing must be held upon request of the defendant or the State. Court to issue written findings of fact and conclusions of law and enter an appropriate order.	Trial judge.
Sentence Review	Appeal to the Supreme Court for any sentence imposed or stayed may be brought by the defendant or the State. Supreme Court may review to determine whether the sentence is inconsistent with the law, unreasonable, inappropriate, excessive, disparate or not warranted based on the findings of fact.	A petition for appeal may be filed by the district attorney or the defendant. The appellate court is to remand the sentence to the trial court when: (1) the sentence is within the guidelines but the guidelines were applied erroneously; or (2) the sentence is outside the guidelines and the facts do not justify the sentence.
Parole Decision-making	Corrections board to promulgate rules for the placement and supervision of inmates on parole. Power to revoke parole and place the offender back in the institution for an amount of time not to exceed the time remaining in the sentence.	No specific provision. Existing parole law is not affected.
Parole Supervision	Every prisoner is to serve a period to the amount of good time accrued and not to exceed the amount of time remaining in the sentence. A person serving a life sentence is not eligible for release until he has served a minimum of 17 years.	No specific provision in the new law.
Good time/ Earned time	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. Mandatory life sentence excluded.	No specific provision in the new law.

	NEW MEXICO	NORTH CAROLINA
Sentencing Structure	Non-capital offenses. Presumptive-fixed sentence established by law for each class of offense. Alteration for aggravating and mitigating circumstances cannot exceed 1/3 of the basic sentence. Firearm or prior convictions cannot be considered as an aggravating circumstance. Court may impose a fine in addition to the basic sentence for certain classes of offenses.	Non-capital offenses (Class A and B felonies are excluded). Presumptive terms established by law for eight classes of felonies. Within each class, different terms are established for offenders with prior felony convictions. Maximum terms of imprisonment to be served in a jail or the state prison and fines are established for all 10 classes of felonies. The judge must impose the presumptive term unless aggravating or mitigating circumstances exist. If the judge deviates from the presumptive term, findings of fact regarding the alteration must be recorded.
Use of a Firearm	Considered as a separate issue in sentencing. Use of a firearm in the commission of a crime can result in an increase to the basic sentence which is served first and cannot be suspended or deferred.	Special provision for prior felony convictions with the use of a deadly weapon within seven years of the present offense. A sentence of at least 14 years is to be imposed and is to be served at the state prison. The offender must serve at least seven years excluding gained time. A person sentenced under this section cannot be sentenced as a youthful offender and is not eligible for probation. Sentence to be served consecutively and to begin after the expiration of the sentence imposed for the present offense.
Habitual or Repeat Offenders	Considered as a separate issue. One prior felony conviction will result in an additional four years; and three or more priors result in eight additional years imprisonment. Sentences under this provision cannot be suspended or deferred.	
Sentencing Authority	Trial judge.	Trial judge.
Sentence Review	No special provision.	If a defendant has been found guilty and the sentence exceeds the presumptive term, the defendant is entitled to appeal as a matter of right: to determine whether the sentence is supported by the evidence introduced.
Parole Decision-making	Removed.	(Other than Class A or B felonies and youthful offenders.) Parole commission must parole each prisoner serving a term of 18 months or more 90 days before the expiration of the term less credit time for time already served, good time and gained time. The prisoner can refuse to accept parole and remain in prison or jail until the expiration of the term at which time he will be unconditionally discharged.
Parole Supervision	Period set as part of the sentence.	90 day period. Prisoner can be returned to custody for violations of parole to serve the remaining 90 days but will continue to receive good time and may be awarded gained time. At the expiration of the term, the prisoner is unconditionally discharged.
Good time/ Earned time	Credits awarded at 12 days per month. Additional credits may be awarded for outstanding meritorious behavior, not to exceed one year.	Good time is accrued at a rate of one day for every day served in custody and can be forfeited for certain misconduct. Gained time credit is awarded for work performance and the amount varies depending on the number of daily hours, the type of work performed and the setting. Gained time credit is not subject to forfeiture for misconduct. Additional gained time may be granted by the Secretary of Corrections for meritorious conduct or emergency work performed, not to exceed the limits established by law.

TENNESSEE	
Sentencing Structure	Classified eleven serious felonies as "Class X" offenses. These include murder, aggravated kidnapping, certain sex crimes, aggravated robbery and certain drug offenses. Minimum sentences, or in some cases a range of sentences, are established for each offense. Only "Class X" sentences must be determinate within the limits prescribed by law for each offense and are not subject to credits for sentence reduction. (Class X offenses also require a mandatory sentence. Other offenses are in a non-mandatory indeterminate structure.)
Use of a Firearm	No specific provision except that certain offenses are placed within the Class X category by virtue of the use of a deadly weapon in their commission.
Habitual or Repeat Offenders	No general provision, however, habitual drug offenders are defined and placed within the Class X category.
Sentencing Authority	Present law not affected. Jury is to impose sentence.
Sentence Review	No special provision.
Parole Decision-making	Every person sentenced under the Class X scheme must serve 40 percent of the determinate sentence imposed before becoming eligible for release classification status. Discretion as to release is then determined by the administrative authority responsible for pardon, parole and release recommendation.
Parole Supervision	A minimum of three years supervised release is required of all Class X offenders.
Good time/Earned time	No specific provision but record of the offender is taken into consideration in determining release classification status. Failure to conform behavior to acceptable standards may result in delaying eligibility for release classification status.

APPENDIX SOURCES

ALASKA	State Laws of Alaska 12.55.125 et seq (1978 cumulative supplement)
ARIZONA	Arizona Revised Statutes 13-601 et seq (1979 cumulative supplement)
CALIFORNIA	California Penal Code §1170 et seq (1979 cumulative supplement)
COLORADO	Colorado Revised Statutes 16-11-309 (1979 cumulative supplement)
ILLINOIS	Illinois Revised Statutes ch. 38, §1005-5-1 et seq
INDIANA	Indiana Code 35-50-1 et seq (1979 cumulative supplement)
MAINE	Maine Revised Statutes Annotated 17-A §1251 et seq (1979 cumulative supplement)
MINNESOTA	Minnesota Statutes §609 et seq (1979 cumulative supplement)
NEW JERSEY	New Jersey Statutes Annotated 2:C 43-6 et seq (Special Pamphlet)
NEW MEXICO	New Mexico Statutes Annotated 31-18-15 et seq (1979 cumulative supplement)
NORTH CAROLINA	North Carolina General Statutes 14-1-1 et seq (1979 cumulative supplement)
PENNSYLVANIA	Pennsylvania Consolidated Statutes Annotated 18§106 et seq (1979 cumulative supplement)
TENNESSEE	Tennessee Code Annotated 38-5402 et seq (1979 cumulative supplement)

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