



1996 National Survey of State Sentencing Structures

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**1996 National Survey of
State Sentencing Structures**

Foreword

Although the total number of violent crimes reported to police decreased 4 percent between 1994 and 1995, there is a public perception that violent crime is at an unacceptable level. In addition, with the incidence of violent crime committed by repeat offenders, fueled by the media the public is increasingly demanding harsher and more certain punishment. As a result, many States are examining sentencing of offenders with an eye toward instituting reforms. Indeed, considerable reform of criminal justice sentencing has already taken place over the past decades.

Although these reforms have been primarily in response to criticism of rehabilitation efforts, they have sought to accomplish widely differing goals, including reducing the disparity that results from discretionary sentencing and increasing sentencing policy with limited correctional resources. To meet these goals, sentencing reforms have taken a variety of forms, and many States have adopted a combination of sentencing schemes that can include determinate or indeterminate sentencing, mandatory minimum sentences for certain offenses, presumptive sentencing guidelines, voluntary or advisory sentencing guidelines, and truth in sentencing. The result is a patchwork of structured sentencing models.

This report presents the findings of a followup to the first major national assessment of sentencing practices that was produced in 1994, with funding from the Bureau of Justice Assistance and conducted by the National Council on Crime and Delinquency. The first chapter is based on a national survey of existing sentencing practices in the 50 States and the District of Columbia. The second chapter is a review of the criminal justice systems' response to the rise in juvenile violent crime. The third chapter discusses the policy implications of the observed trends in adult and juvenile justice sentencing reforms.

As adult prison populations continue to grow, interest in structured sentencing reforms will increase. Also as juvenile violent crime continues to increase, juvenile justice reforms will also continue. It is our hope that this assessment of structured sentencing practices and juvenile justice reform will be a valuable resource to those States considering revising their current sentencing practices.

Nancy E. Gist
Director

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Finally, NCCD would like to acknowledge the individuals who responded to the survey on which the report is based. It is hoped that this report will provide useful information to them on current sentencing practices.

Contents

Executive Summary	xi
Chapter 1 Structured Sentencing Reform	1
Definitions of Sentencing Practices	1
Determinate Sentencing	1
Indeterminate Sentencing	2
Mandatory Minimum Sentencing	2
Presumptive Sentencing Guidelines	2
Voluntary Sentencing Guidelines	2
Survey Results	3
Determinate, Indeterminate, and Sentencing Guideline Sentencing Systems	3
Mandatory Minimums	6
Sentencing Guideline Commissions, Truth in Sentencing, Parole, and Good Time	10
Two- and Three-Strikes Laws	16
Chain Gangs	16
Summary	18
Chapter 2 Juvenile Justice Reform	19
Changes in Juvenile Laws	20
State Waiver Provisions	21
Summary	28
Chapter 3 Major Findings, Policy Implications, and Recommendations	29
Structured Sentencing Reform	29
Structured Sentencing Reform: Major Findings	29
Current Sentencing Practices	29
Sentencing Guideline Models: Purposes and Goals	30
Structured Sentencing Reform: Policy Implications	30
Reducing Disparity While Maintaining Discretion	30
Displacement of Discretion	30
Prison Crowding	30
Structured Sentencing Reform: Recommendations	31
Juvenile Justice Reforms	31
Juvenile Justice Reforms: Major Findings	32
Changes in Juvenile Laws	32
State Waiver Provisions as of 1995	32
Current Transfer Provisions	32
Juvenile Justice Reforms: Policy Implications	33
Juvenile Justice Reforms: Recommendations	33
Appendix A Bibliography	35
Appendix B Sources for Further Information	37

Exhibits

Exhibit 1-1	U.S. Sentencing Practices, February 1996	4
Exhibit 1-2	Types of Sentencing Practices by State, February 1996	6
Exhibit 1-3	Types of Sentencing Guidelines by State, February 1996	7
Exhibit 1-4	State Offenses With Mandatory Minimum Incarceration Sentences, February 1996	8
Exhibit 1-5	U.S. Sentencing Commissions, Truth in Sentencing, Parole, and Good Time Provisions, February 1996	11
Exhibit 1-6	Status of U.S. Guidelines Commissions, February 1996	13
Exhibit 1-7	Responsibilities of State Sentencing Guidelines Commissions, February 1996	14
Exhibit 1-8	Postrelease Practices in States That Have Abolished Parole, February 1996	15
Exhibit 1-9	Two- and Three-Strikes Laws, February 1996	17
Exhibit 1-10	Use of Chain Gangs, February 1996	18
Exhibit 2-1	Violent Crime Index Arrest Rates for Juveniles, Ages 10-17, 1965-1995	20
Exhibit 2-2	Changes in State Juvenile Laws, 1994-1995	22
Exhibit 2-3	Types of Judicial Waiver and Statutory Exclusion by State, 1992-1995	24
Exhibit 2-4	Summary of Juvenile Transfer Provisions, 1995	26

Executive Summary

Criminal justice sentencing has undergone considerable reform during the past two decades. Because of excessive sentencing disparity and criticisms of the rehabilitative ideal, some States have replaced indeterminate sentencing with structured sentencing schemes such as determinate sentencing, mandatory minimum penalties, and sentencing guidelines. However, as reported in this study, most States have retained indeterminate sentencing structures, parole, and the use of good time credits to reduce prison terms.

This study is a followup to the national assessment of the various sentencing practices that was conducted in 1994. The study was funded by the Bureau of Justice Assistance (BJA) and conducted by the National Council on Crime and Delinquency (NCCD). The information is based on a national survey of State sentencing practices as reported by the States in 1996.

Current Sentencing Practices

- ❑ The predominate sentencing structure for most States is an indeterminate sentencing structure (36 States and the District of Columbia).
- ❑ The vast majority of States, including those that have adopted determinate and sentencing guideline models, have retained some form of discretionary parole release and postrelease supervision. In fact, the use of postrelease supervision exists even in those States that have abolished parole.
- ❑ All States employ some version of mandatory minimum sentencing laws, which target habitual offenders and the crimes of possessing a deadly weapon, driving under the influence of alcohol, and possessing and/or distributing drugs.
- ❑ All but Hawaii and Utah allow inmates to earn some form of good time credits either to reduce a sentence or to advance a parole eligibility date.
- ❑ Although most States have retained indeterminate sentencing structures, these laws are becoming increasingly determinate by greater use of mandatory minimums, truth in sentencing provisions, and reducing the amount of good time credits an inmate can earn while incarcerated. In other words, States are using models other than sentencing guidelines to reduce sentencing disparity.

Sentencing Guideline States

- ❑ To date, 19 States and the Federal Government have sentencing commissions and 17 States have implemented presumptive or voluntary/advisory sentencing guidelines.
- ❑ Of the 17 States that have adopted sentencing guidelines, 10 are presumptive and 7 are voluntary or advisory in nature.
- ❑ Since the 1994 survey, Missouri, Ohio, and Oklahoma have adopted sentencing guidelines. Massachusetts, Michigan, and Montana are studying the possible adoption of guidelines, although it is not clear whether these States will adopt guidelines. In 1997, the District of Columbia established a sentencing commission as required by Congress.
- ❑ In 1996, Tennessee and Wisconsin abolished their sentencing commissions. Wisconsin also abolished its guidelines while Tennessee retained its guidelines.

Juvenile Justice Sentencing Practices

- ❑ States are making it easier to transfer juveniles to the adult court by adding specific offenses for transfer and/or lowering the upper age limit of juvenile court jurisdiction.
- ❑ Some States have changed their policies on the confidentiality of juvenile records to allow such records to be used in future adult court proceedings. Some States have also changed their policies by opening juvenile court proceedings to the public.
- ❑ A number of States have created laws that make the family, as well as the juvenile, more accountable for crimes committed by the juvenile. Responsibilities vary from State to State. For example, some States require parents to pay court or supervision fees, or require parents to pay fees toward their child's custody in a State institution or other care.

State Juvenile Waiver Provisions

Three specific methods can be used to transfer a juvenile to adult court: (1) statutory exclusion laws, where legislation mandates certain crimes automatically be transferred; (2) judicial waiver, where the juvenile judge decides to waive the juvenile; and (3) prosecutorial discretion, where the prosecutor decides to try the juvenile as an adult.

- ❑ Twenty-four States changed their statutory exclusion laws by adding crimes, and six States lowered the age limit at which a juvenile can be transferred.

- ❑ Ten States changed their judicial waiver laws by adding crimes, and 11 lowered the age limit a juvenile can be transferred.

Current Transfer Provisions as of 1995

- ❑ Forty-seven States had provisions for judicial waivers. A juvenile court judge makes the determination to waive the juvenile based on age, current offense, criminal history, and amenability to rehabilitation.
- ❑ Eleven States had provisions for prosecutorial waivers. A prosecutor decides which court has jurisdiction when both the juvenile court and the adult court have concurrent jurisdiction. The juvenile's age, current offense, criminal history, and amenability to rehabilitation may be used in making this determination.
- ❑ Thirty-seven States had provisions for statutory exclusions. Juveniles are automatically excluded from a juvenile court's original jurisdiction based on age and/or offense committed.
- ❑ Twenty-two States had provisions for reverse waivers. These waiver provisions allow the criminal court to transfer cases from adult court to juvenile court under certain circumstances.
- ❑ Eighteen States required that once a juvenile was waived to adult court, all subsequent charges against him or her were to be prosecuted in adult court.

Structured Sentencing Reform

This study, funded by the Bureau of Justice Assistance (BJA) and conducted by the National Council on Crime and Delinquency (NCCD), is an updated national survey of State sentencing practices, including those in the District of Columbia.

The criminal justice community has yet to develop a clear consensus on the basic definitions of structured sentencing and its goals. States that have adopted various forms of structured sentencing have done so with multiple goals and expectations. The most frequently cited goals are: (1) increasing sentencing fairness; (2) reducing unwarranted disparity, in the decision to imprison (dispositional disparity) and/or in sentence length (durational disparity); (3) establishing truth in sentencing; and (4) establishing a balance of sentencing policy with limited correctional resources.

Structured sentencing reforms can be used to increase the certainty of punishment and mandate the period of imprisonment so that potential offenders are deterred and those identified as dangerous offenders are incapacitated. At the same time, sentencing reforms can be used to reduce the likelihood and length of imprisonment for the so-called nondangerous offender. Some State officials hope that these reforms will help them avoid a severe prison crowding situation by regulating prison population growth according to available correctional resources. These purposes, however, are not universally accepted, and the means used to implement them vary considerably across jurisdictions.

Definitions of Sentencing Practices

A primary objective of the 1996 national survey was to classify each State according to the type of sentencing practice used. Due to a lack of consensus regarding the meaning of commonly used terms such as determinate sentencing, indeterminate sentencing, sentencing guidelines, voluntary sentencing guidelines, presumptive guidelines, and advisory guidelines, operational definitions were developed to bring some consistency to data collected from each State. These definitions are defined as follows and used throughout the report:

Determinate Sentencing

Sentences of incarceration in which the offender is given a fixed term that may be reduced by “good time” or earned time. Usually explicit standards specify the amount of punishment and a set release date with no review by an administrative agency (parole board). Postincarceration supervision may be part of the sentence.

Indeterminate Sentencing

Sentences of incarceration in which an administrative agency, generally a parole board, has the authority to release an offender and determine whether an offender's parole will be revoked for violation of the conditions of release. In one form of indeterminate sentencing, the judge specifies only the maximum sentence length (a fixed term); the associated minimum duration is automatically implied but is not within the judge's discretion. In the more traditional form of indeterminate sentencing, the judge specifies maximum and minimum durations that are set by statute. The sentencing judge has discretion on the minimum and maximum sentences.

Mandatory Minimum Sentencing

A minimum sentence that is specified by statute for all offenders convicted of a particular crime or a particular crime with special circumstances (e.g., robbery with a firearm or selling drugs to a minor within 1,000 feet of a school). Mandatory minimums can be used in both determinate and indeterminate sentencing structures. Within an indeterminate sentencing structure, the mandatory minimum requires the inmate to serve a fixed amount of time in prison before being eligible for discretionary release. Under a determinate sentence, the offender is required to serve a fixed amount of time in prison before being eligible for release without the approval of a parole board.

Presumptive Sentencing Guidelines

Sentencing that meets all the following conditions: (1) the appropriate sentence for an offender in a specific case is presumed to fall within a range of sentences authorized by sentencing guidelines that are adopted by a legislatively created sentencing body, usually a sentencing commission; (2) sentencing judges are expected to sentence within the range or provide written justification for departure; and (3) the guidelines provide for some review, usually appellate, of the departure. Presumptive guidelines may employ determinate or indeterminate sentencing structures.

Voluntary Sentencing Guidelines

Recommended sentencing policies that are not required by law. They serve as a guide and are based on past sentencing practices. The legislature has not mandated their use. Voluntary/advisory guidelines may use determinate or indeterminate sentencing structures.

Survey Results

This study is a followup to the first major national assessment of the various sentencing practices that was conducted in 1994 by the National Council on Crime and Delinquency. The data presented are current as of 1996. These data are based on States' responses to a questionnaire that asked specific questions about their sentencing structure as well as pending legislation on sentencing reform. Followup telephone calls were made to verify each State's responses and/or to clarify certain answers.

After careful review of each State's survey responses, NCCD found that the type of sentencing practices reported by the State did not accurately reflect the true nature of its sentencing practice. In some cases NCCD redefined a State's sentencing type based on the operational definitions that were developed for this report. For example, States that responded that they have fixed sentences that are reviewed by a parole board were recategorized from determinate sentencing to an indeterminate sentencing structure.

Determinate, Indeterminate, and Sentencing Guideline Sentencing Systems

Exhibit 1-1 classifies each State and the District of Columbia by determinate, indeterminate, and/or sentencing guideline structures. In the 1994 survey, the dominant sentencing structure in the United States was indeterminate sentencing; the exhibit shows that this continues to be true in the 1996 survey. A total of 36 States and the District of Columbia were classified as having a predominantly indeterminate sentencing structure, whereas 14 States were classified as having determinate sentencing (Exhibits 1-1 and 1-2). It should be noted that several States allow for indeterminate sentencing for certain types of crimes. For example, in California, offenders can receive a 25-year-to-life sentence with the possibility of parole. These inmates are under an indeterminate sentencing structure. NCCD, however, classified California and other such States as determinate as the vast majority of offenders are sentenced under a determinate sentencing structure. New York has determinate sentencing for repeat violent felony offenders but indeterminate sentencing for all other offenders, which represents the majority of inmates. Hence, NCCD classified this State as predominantly an indeterminate sentencing State.

Seventeen States have sentencing guidelines in place across the country. As shown in Exhibit 1-3, seven States were voluntary/advisory and 10 States were presumptive. Another three States are studying the feasibility of adopting guidelines (Massachusetts, Michigan, and Montana).

Exhibit 1-1 U.S. Sentencing Practices, February 1996

State	Determinate Sentencing	Indeterminate Sentencing	Type of Sentencing Guidelines	Mandatory Minimum Prison Sentencing
Alabama		◆		◆
Alaska		◆		◆
Arizona	◆			◆
Arkansas		◆	Voluntary/ Advisory	◆
California	◆			◆
Colorado		◆		◆
Connecticut		◆		◆
Delaware	◆		Presumptive	◆
District of Columbia		◆		◆
Florida	◆		Presumptive	◆
Georgia		◆		◆
Hawaii		◆		◆
Idaho		◆		◆
Illinois	◆			◆
Indiana		◆		◆
Iowa		◆		◆
Kansas		◆	Presumptive	◆
Kentucky		◆		◆
Louisiana		◆	Voluntary/ Advisory	◆
Maine	◆			◆
Maryland		◆	Voluntary/ Advisory	◆
Massachusetts		◆	Under Study	◆
Michigan		◆	Under Study	◆
Minnesota	◆		Presumptive	◆
Mississippi	◆			◆
Missouri		◆	Voluntary	◆
Montana		◆	Under Study	◆
Nebraska		◆		◆
Nevada		◆		◆
New Hampshire		◆		◆

Exhibit 1-1 U.S. Sentencing Practices, February 1996 (continued)

State	Determinate Sentencing	Indeterminate Sentencing	Type of Sentencing Guidelines	Mandatory Minimum Prison Sentencing
New Jersey		◆		◆
New Mexico	◆			◆
New York		◆		◆
North Carolina	◆		Presumptive	◆
North Dakota		◆		◆
Ohio ¹	◆		Presumptive	◆
Oklahoma		◆	Voluntary/ Advisory	◆
Oregon	◆		Presumptive	◆
Pennsylvania		◆	Presumptive	◆
Rhode Island		◆		◆
South Carolina		◆		◆
South Dakota		◆		◆
Tennessee ²		◆	Presumptive	◆
Texas		◆		◆
Utah		◆	Voluntary/ Advisory	◆
Vermont		◆		◆
Virginia	◆		Voluntary/ Advisory	◆
Washington	◆		Presumptive	◆
West Virginia		◆		◆
Wisconsin ²		◆		◆
Wyoming		◆		◆
TOTAL	14	37	17	51

1. Ohio abolished indeterminate sentences in July 1996.
2. Tennessee and Wisconsin continue to have sentencing guidelines; the sentencing commissions were abolished in 1996.

Prepared by National Council on Crime and Delinquency.

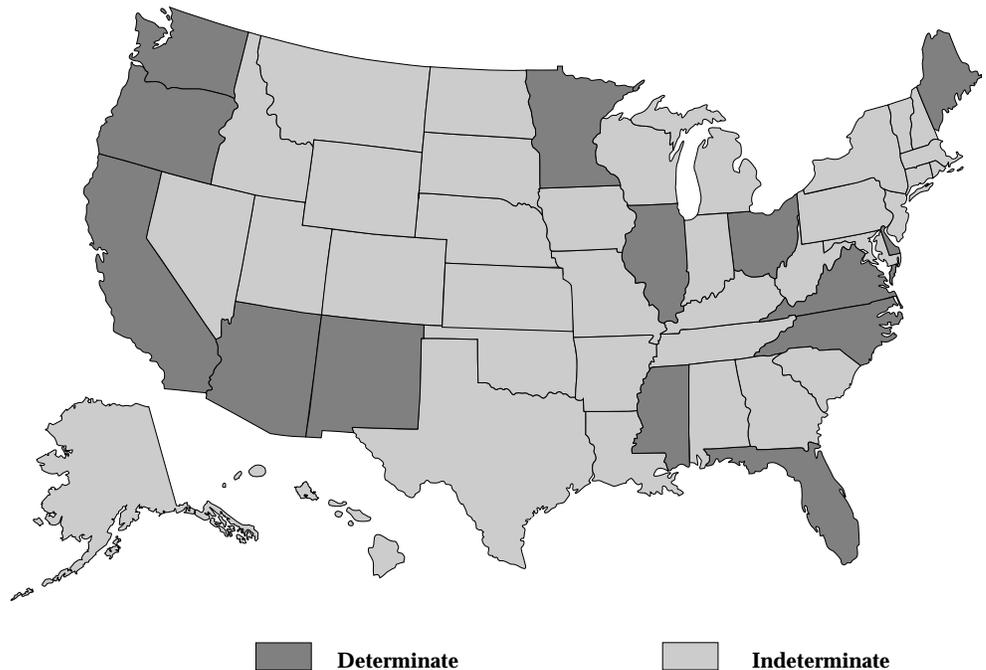
Maryland, which had adopted voluntary guidelines in 1994, suspended the implementation of newly revised guidelines following harsh criticism for purporting to reduce selected existing sentences. In Tennessee and Wisconsin, sentencing commissions were abolished by the legislatures but the guidelines remain.

Mandatory Minimums

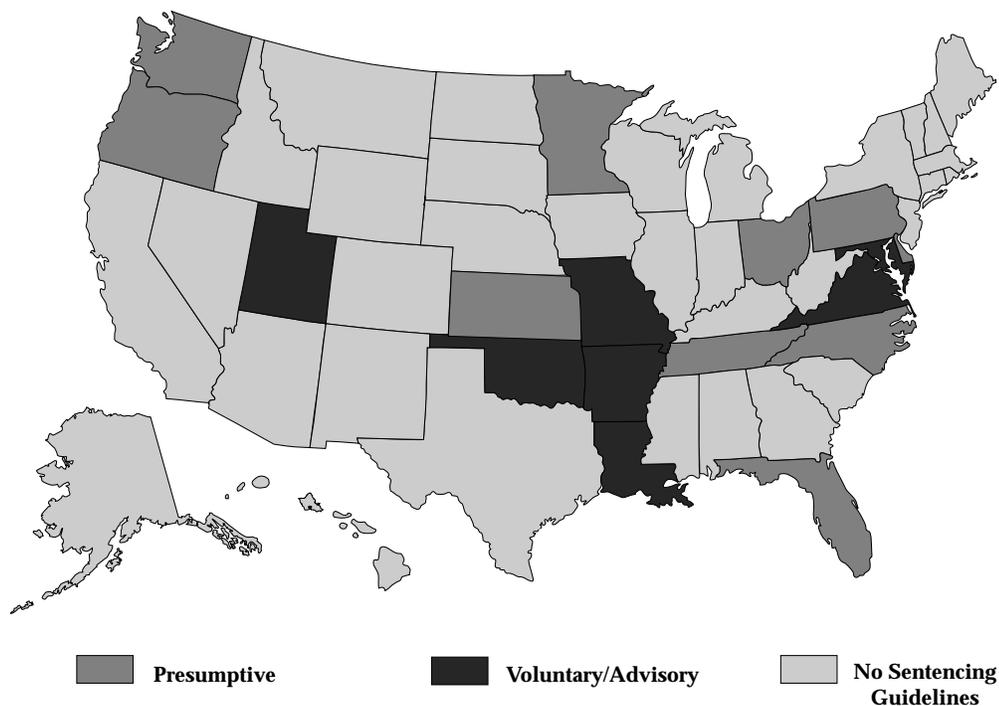
Collecting data on mandatory minimum sentences was difficult. Originally, data were to be collected from States with mandatory minimum periods of incarceration for selected crimes. Several States, however, initially reported no mandatory sentences because the sentences exist in statute but are not used, an offender may receive the mandatory sentence but is not eligible for early release via good time and parole or the sentence is mandatory only because incarceration cannot be suspended. It was decided to incorporate all these possibilities in the presentation of data.

As shown in Exhibits 1-1 and 1-4, all States have some form of mandatory sentencing provisions. The most prevalent application of mandatory sentencing is for repeat or habitual offenders (40 States), crimes committed

Exhibit 1-2 Types of Sentencing Practices by State, February 1996



Prepared by National Council on Crime and Delinquency.

Exhibit 1-3 Types of Sentencing Guidelines by State, February 1996

Prepared by National Council on Crime and Delinquency.

using a deadly weapon (38 States and the District of Columbia), drug possession/trafficking (36 States and the District of Columbia), and drunk driving (31 States).

Survey responses from Hawaii, Kansas, Kentucky, Maine, Nebraska, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Vermont, Virginia, Washington, and Wyoming indicate that these jurisdictions do not have mandatory minimums for drug possession or trafficking. Mandatory minimum sentences are imposed for all the offenses listed in Exhibit 1-4 (as well as other unlisted offenses) in Colorado, Delaware, Georgia, Illinois, Louisiana, Mississippi, Missouri, Montana, Ohio, Pennsylvania, Rhode Island, West Virginia, and Wisconsin.

It is not possible to summarize in this chapter all the information collected on mandatory minimum drug offenses. The types of drugs, the amounts required for mandatory sentences to apply, and the penalties imposed vary widely. Many States have implemented mandatory sentences for sale of drugs to minors and sales within a certain distance (usually 1,000 feet) of a school. Since the 1994 survey, the number of States with mandatory minimum sentences for crimes in the “other” category nearly tripled from 11 to 32.

Exhibit 1-4 State Offenses¹ With Mandatory Minimum Incarceration Sentences, February 1996

State	Mandatory Minimum Offense					
	Repeat/Habitual	Drunk Driving	Drug Possession/Trafficking	Use/Possess Weapon	Sex Offense	Other
Alabama	◆	◆	◆	◆		
Alaska			◆	◆		◆
Arizona	◆	◆	◆	◆	◆	
Arkansas	◆	◆	◆	◆		◆
California	◆		◆	◆	◆	◆
Colorado	◆	◆	◆	◆	◆	◆
Connecticut		◆	◆	◆	◆	◆
Delaware	◆	◆	◆	◆	◆	◆
District of Columbia			◆	◆		
Florida	◆		◆	◆		
Georgia	◆	◆	◆	◆	◆	◆
Hawaii	◆			◆		◆
Idaho			◆		◆	◆
Illinois	◆	◆	◆	◆	◆	◆
Indiana	◆		◆	◆		
Iowa	◆		◆	◆		◆
Kansas		◆				
Kentucky	◆	◆		◆	◆	◆
Louisiana	◆	◆	◆	◆	◆	◆
Maine		◆		◆		
Maryland	◆		◆	◆	◆	
Massachusetts		◆	◆	◆		
Michigan	◆	◆	◆	◆		◆
Minnesota	◆		◆	◆		

1. Not all offenses, especially drunk driving, are felonies. In addition, States may have mandatory minimum incarceration for only specific types of offenses within each offense category listed.

**Exhibit 1-4 State Offenses¹ With Mandatory Minimum
(continued) Incarceration Sentences, February 1996**

State	Mandatory Minimum Offense					
	Repeat/ Habitual	Drunk Driving	Drug Possession/ Trafficking	Use/Possess Weapon	Sex Offense	Other
Mississippi	♦	♦	♦	♦	♦	♦
Missouri	♦	♦	♦	♦	♦	♦
Montana	♦	♦	♦	♦	♦	♦
Nebraska	♦	♦			♦	
Nevada	♦		♦			
New Hampshire	♦		♦	♦	♦	♦
New Jersey	♦	♦	♦	♦	♦	
New Mexico	♦	♦		♦		
New York	♦		♦	♦	♦	
North Carolina	♦	♦	♦			
North Dakota		♦	♦	♦		♦
Ohio	♦	♦	♦	♦	♦	♦
Oklahoma	♦			♦		
Oregon		♦		♦	♦	♦
Pennsylvania	♦	♦	♦	♦	♦	♦
Rhode Island	♦	♦	♦	♦	♦	♦
South Carolina	♦		♦	♦		♦
South Dakota			♦	♦	♦	♦
Tennessee	♦	♦			♦	♦
Texas	♦	♦			♦	♦
Utah		♦	♦		♦	♦
Vermont	♦					♦
Virginia	♦				♦	
Washington	♦				♦	♦
West Virginia	♦	♦	♦	♦	♦	♦
Wisconsin	♦	♦	♦	♦	♦	♦
Wyoming	♦					

Sentencing Guideline Commissions, Truth in Sentencing, Parole, and Good Time

Exhibit 1–5 summarizes whether a State had provisions for a sentencing guidelines commission, truth in sentencing, postrelease supervision of released inmates, and good time provisions. The exhibits that follow provide detailed descriptions of each sentencing law attribute.

Sentencing Commissions in the United States. States create sentencing commissions for many reasons. The most frequently cited reasons are to increase sentencing fairness, to reduce unwarranted disparity, to establish truth in sentencing, to reduce or control prison crowding, and to establish standards for appellate review of sentences. These purposes are not universally accepted, and the means used to implement them vary among jurisdictions. The purposes outlined by many commissions influence nearly every aspect of the guideline development process. Therefore, each guideline system should be evaluated against its stated goals.

Although sentencing guidelines have been the dominant form of sentencing reform during the past two decades, it is true that the majority of States have not adopted such sentencing structures and others have tried but failed to implement them. Indeed, voluntary guidelines may be followed with some regularity or substantially ignored by sentencing judges. Exhibit 1–6 shows the status of sentencing guidelines commissions in the United States, and Exhibit 1–7 lists the responsibilities of the various sentencing guidelines commissions. It should be noted that use of the term commission is a generalization and some entities may use other names but perform essentially the same functions as sentencing commissions. Nineteen States have sentencing commissions and 17 States have sentencing guidelines. Of the 17 States with sentencing guidelines, 10 report having presumptive guidelines, while the remaining seven have voluntary/advisory guidelines (Arkansas, Louisiana, Maryland, Missouri, Oklahoma, Utah, and Virginia). Survey results indicate that five States with established sentencing commissions are in various stages of guidelines investigation or implementation (Massachusetts, Michigan, Missouri, Montana, and Oklahoma).

Truth in Sentencing. Thirty States and the District of Columbia responded affirmatively to the question: “Does your State have truth in sentencing?” But many States do not define truth in sentencing as a statute that mandates that an offender must serve a certain percentage of the stated sentence. In addition, the percentage of sentence required to be served frequently varies by the class and degree of the offense. For example, Arizona requires all offenders convicted of homicide and rape or sexual offenses to serve 100 percent of their sentence. All other offenders must serve 85 percent of their sentence.

Exhibit 1-5 U.S. Sentencing Commissions, Truth in Sentencing, Parole, and Good Time Provisions, February 1996

State	Sentencing Guidelines Commission	Truth in Sentencing	Parole Release and Supervision ¹		Good Time ²
			Discretionary Release Body	Postrelease Supervision	
Alabama		Pending	Parole	◆	◆
Alaska ³			Parole	◆	◆
Arizona		◆		◆	◆
Arkansas	◆		Discretionary Release Body	◆	◆
California		◆		◆	◆
Colorado ⁴		◆	Parole	◆	◆
Connecticut		◆	Parole	◆	◆
Delaware	◆	◆		◆	◆
District of Columbia		◆	Parole	◆	◆
Florida	◆	◆		◆	◆
Georgia		◆	Parole	◆	◆
Hawaii			Parole	◆	
Idaho			Parole	◆	◆
Illinois		◆		◆	◆
Indiana				◆	◆
Iowa		◆	Parole	◆	◆
Kansas	◆	◆	Parole	◆	◆
Kentucky		◆	Parole	◆	◆
Louisiana	◆	◆	Parole	◆	◆
Maine					◆
Maryland	◆		Parole	◆	◆
Massachusetts	◆		Parole	◆	◆

1. All States and the District of Columbia maintain one or more parole release and supervision options.
2. Category includes automatic and earned good time such as educational programs, training, work programs, and good behavior.
3. In Alaska, the State's Judicial Council functions very much as a sentencing commission.
4. Beginning in 1995 certain nonviolent offenders are allowed to accrue earned time while on parole.

Exhibit 1-5 U.S. Sentencing Commissions, Truth in Sentencing, Parole, and Good Time Provisions, February 1996

State	Sentencing Guidelines Commission	Truth In Sentencing	Parole Release and Supervision ¹		Good Time ²
			Discretionary Release Body	Postrelease Supervision	
Michigan ⁵	◆	◆	Discretionary Release Body	◆	◆
Minnesota	◆	◆		◆	◆
Mississippi		◆		◆	◆
Missouri	◆	◆	Parole	◆	◆
Montana	◆	◆	Parole	◆	Until 1/97
Nebraska			Parole	◆	◆
Nevada			Parole	◆	◆
New Hampshire		◆	Parole	◆	◆
New Jersey			Parole	◆	◆
New Mexico				◆	◆
New York		◆	Parole	◆	◆
North Carolina	◆	◆		◆	◆
North Dakota		◆	Parole	◆	◆
Ohio	◆	◆		◆	◆
Oklahoma	◆	◆	Parole	◆	◆
Oregon	◆	◆		◆	◆
Pennsylvania	◆	◆	Parole	◆	◆
Rhode Island			Parole	◆	◆
South Carolina	Under Study	◆	Parole	◆	◆
South Dakota			Parole	◆	◆
Tennessee ⁶		◆	Parole	◆	◆
Texas			Parole	◆	◆
Utah	◆	◆	Parole	◆	
Vermont			Parole	◆	◆

5. Legislation had been passed for truth in sentencing but had not yet been implemented.
6. The sentencing commission was recently abolished, but sentencing guidelines remain.

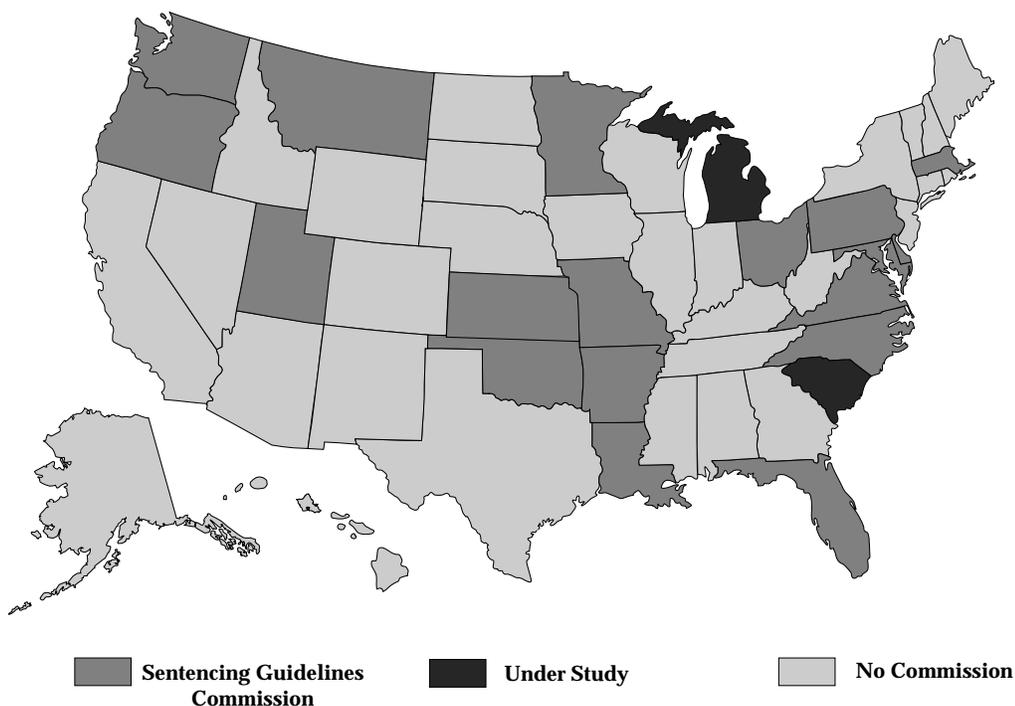
Exhibit 1-5 U.S. Sentencing Commissions, Truth in Sentencing, Parole, and Good Time Provisions, February 1996

State	Sentencing Guidelines Commission	Truth in Sentencing	Parole Release and Supervision ¹		Good Time ²
			Discretionary Release Body	Postrelease Supervision	
Virginia	◆	◆		◆	◆
Washington	◆	◆		◆	◆
West Virginia			Parole	◆	◆
Wisconsin ^{6,7}			Parole	◆	◆
Wyoming			Parole	◆	◆

7. Good time no longer exists in Wisconsin. Instead it has "bad time," which allows jurisdictions to add time to the mandatory release date.

Prepared by National Council on Crime and Delinquency.

Exhibit 1-6 Status of U.S. Guidelines Commissions, February 1996



Prepared by National Council on Crime and Delinquency.

Exhibit 1-7 Responsibilities of State Sentencing Guidelines Commissions, February 1996

State	Monitor Sentencing Practices	Draft Legislation for Revisions	Conduct Impact Studies	Provide Training Evaluation	Provide Technical Assistance	Other
Alabama	◆		◆		◆	
Arkansas	◆	◆	◆	◆	◆	◆
Delaware	◆	◆	◆		◆	
Florida	◆	◆			◆	
Kansas	◆	◆	◆	◆	◆	◆
Louisiana	◆	◆	◆	◆	◆	
Maryland	◆				◆	◆
Massachusetts ¹	◆		◆			◆
Michigan ¹	◆	◆	◆			◆
Minnesota	◆		◆	◆	◆	
Missouri ¹	◆					◆
Montana ¹		◆	◆			◆
North Carolina	◆	◆	◆	◆	◆	◆
Ohio	◆	◆	◆	◆		◆
Oklahoma ¹	◆	◆	◆	◆	◆	
Oregon	◆	◆	◆		◆	
Pennsylvania	◆	◆	◆	◆	◆	
Utah	◆	◆	◆		◆	◆
Virginia	◆	◆				◆
Washington	◆	◆	◆		◆	◆

1. State initiated a commission and is in the early stages of studying guidelines implementation and commission responsibility.

Prepared by National Council on Crime and Delinquency.

Use of Parole Release, Postrelease Supervision, and Good Time. Despite increases in mandatory sentencing, 35 States and the District of Columbia have administrative boards that consider the release of inmates who were sentenced to incarceration under 1996 sentencing policies. Additional States continue to have boards that consider the release of inmates who were admitted to prison under older sentencing laws.

The survey asked some questions regarding discretionary release from prison. All States and the District of Columbia reported having parole or some other form of postrelease supervision option. Maine and Virginia, for example, do not have any form of strictly defined postrelease supervision, except for inmates who are still under the old sentencing structure. Even in these States, however, probation supervision is often required after an inmate has completed the prison sentence. And the offender receives a prison sentence followed by probation supervision. In Florida and Washington State, parole in its purest sense has been eliminated, but has been replaced by a form of postrelease supervision that is not called parole. Exhibit 1-8 shows that postrelease supervision exists even in those States that have abolished parole.

Forty-eight States and the District of Columbia provide some form of credit that inmates can obtain to reduce the amount of time incarcerated. These credits may be earned or automatic. Offenders can earn credits through educational training, and work programs and for good behavior. The type of credit that can be earned varies by State.

Exhibit 1-8 Postrelease Practices in States That Have Abolished Parole, February 1996

State	Year Discretionary Parole Was Abolished	Postrelease Supervision Available After Abolishment of Discretionary Release by Parole Board
Arizona	1994	Community supervision.
Delaware	1990	Administrative supervision, field supervision, intensive supervision, electronic monitoring, and halfway houses.
Florida	1983	Conditional release and controlled release.
Illinois	1978	Mandatory supervised release.
Maine	1976	Probation term can be imposed by the court after prison term is completed.
Minnesota	1982	Supervised release.
Mississippi	1995	Earned release supervision.
North Carolina	1994	Postrelease supervision for most serious offenses.
Ohio	1996	Judicial release, shock incarceration, and furlough with judicial approval.
Oregon	1989	Community supervision.
Virginia	1995	Probation term can be imposed by the court after prison term is completed.
Washington	1984	Community custody and community supervision.

Prepared by National Council on Crime and Delinquency.

Through the survey and followup telephone calls, NCCD was able to obtain information on States that have provisions that allow inmates to reduce their sentence. As a result of changes in sentencing laws within some States, good time provisions have had to be revised. For example, in a State that enacts truth in sentencing laws that require inmates to serve 85 percent of their sentence, a maximum of 15 percent of good time can be earned. In Mississippi and Virginia inmates can earn up to 30 days of good time credits for every 30 days served in prison prior to abolishment of parole and enactment of truth in sentencing. By early 1996, good time credits were restricted to no more than 15 percent of sentences in those States.

Two- and Three-Strikes Laws

Most States that have passed two- and three-strikes laws had preexisting sentencing laws that addressed repeat and habitual offenders.¹

The two- and three-strikes laws are intended to significantly increase the prison sentences of persons convicted of specific crimes who have been previously convicted of a violent or serious felony offense. Which offenses are counted as a “strike” varies by State. In addition, the two- and three-strikes laws limit the possibility of offenders receiving anything other than a prison sentence.

Exhibit 1–9 lists the States that had passed “two or three strikes and you’re out” legislation as of February 1996. The overwhelming majority of these laws were enacted between 1993 and 1995. Only Iowa had such legislation pending as of February 1996.

Chain Gangs

Chain gangs have recently received a great deal of public attention. Public opinion varies about whether chain gangs should be used. Opponents find that chain gangs are too barbaric for modern times. Those in favor of this program feel that it incapacitates some and deters others who might attempt to flee a less restrictive outside work crew. Despite all the controversy, five States enacted legislation to use chain gangs (Exhibit 1–10). Alabama, Arizona, Florida, Iowa, and Maine currently use chain gangs, and another six States had legislation pending (California, Georgia, Indiana, Kansas, Oklahoma, and Wisconsin). Oklahoma had chain gang legislation under study.

1. For a more detailed discussion refer to the report by John Clark et al., *Three Strikes and You’re Out: A Review of State Legislation*.

Exhibit 1-9 Two- and Three-Strikes Laws, February 1996

State	Number of Strikes Required	Year Enacted
Arkansas	2/3	1995
California	2/3	1994
Colorado	3	1994
Connecticut	3	1994
Florida	3	1995
Georgia	2/4	1995
Indiana	3	1994
Kansas	2/3	1994
Louisiana	3/4	1994
Maryland	4	1994
Montana	2/3	1995
Nevada	3	1995
New Jersey	3	1995
New Mexico	3	1994
North Carolina	3	1994
North Dakota	2	1995
Pennsylvania	2/3	1995
South Carolina	2	1995
Tennessee	2/3	1995
Utah	3	1995
Vermont	3	1995
Virginia	3	1994
Washington	3	1993
Wisconsin	3	1994

Prepared by National Council on Crime and Delinquency.

Exhibit 1-10 Use of Chain Gangs, February 1996

State	Chain Gangs	Pending Legislation
Alabama	◆	
Arizona	◆	
California		◆
Florida	◆	
Georgia		◆
Indiana		◆
Iowa ¹	◆	
Kansas		◆
Maine ²	◆	
Oklahoma ³		◆
Wisconsin		◆

1. Legislation passed, and implementation plans were being finalized.
2. Called Public Work Crews.
3. Chain gang legislation was under study.

Prepared by National Council on Crime and Delinquency.

Summary

States have been making numerous changes to their sentencing structures. The vast majority of these reforms have increased incarceration rates, worsened prison crowding, and eliminated disparity in sentencing.

It is interesting to note that not all sentencing structure changes are as they seem. For example, a number of States have reported that they have abolished parole. In fact these States have maintained an alternative form of postrelease supervision, similar to parole, that is not well publicized.

Furthermore, although most States have retained indeterminate sentencing structures, these laws are becoming increasingly determinate structure States by greater use of mandatory minimums, truth in sentencing provisions, and reduction in the amount of good time credits an inmate can earn while incarcerated. In other words, States are using models other than sentencing guidelines to reduce sentencing disparity. Since 1994, no additional State has adopted guidelines although five States are reviewing the feasibility of such a sentencing model.

Juvenile Justice Reform

This chapter provides an overview of recent changes in juvenile justice legislation that have occurred, in part to combat increases in juvenile arrests for violent crimes.¹ The criminal justice system and the public are moving away from the more traditional juvenile court. The juvenile court system has moved away from a philosophy based on rehabilitation and toward one based on punishment. Emphasis, particularly for violent crime, tends to be on the offense committed and societal interests instead of the child and what is best for him or her.

With the increase in violent juvenile crime (Exhibit 2-1), public concern has also increased. The arrest rates for violent juvenile crimes has steadily increased from 1965 to 1995. Society is increasingly demanding retribution and incapacitation for violent juveniles. It is believed that a major way to accomplish punitiveness is to hold the juvenile criminally responsible by treating and processing him or her as an adult.

Whether a juvenile is capable of determining right from wrong has become increasing irrelevant. Changes in various States' criminal justice legislation have made it easier to charge a violent juvenile as an adult. Policymakers believe that these changes will deter offenders and potential offenders, thereby reducing the crime rate. It is important to note that these changes have not come about as a result of any empirical evidence that would justify such policy reforms but may be better viewed as political responses to heightened public concern about crime and criminal justice.² Recent studies conducted by Donna Bishop³ and Jeffrey Fagan⁴ have found that juveniles transferred to the adult system in Florida, New York, and New Jersey were significantly more likely to be rearrested (by almost 30 percent) than those retained in juvenile court.⁵

1. Information was obtained from sources such as the National Conference of State Legislators and the U.S. Department of Justice, Office of Juvenile Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

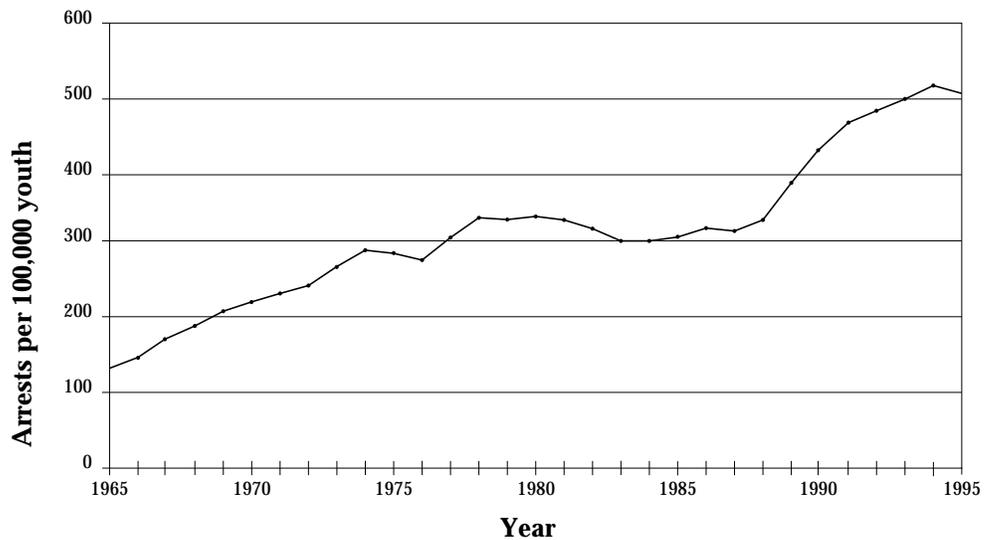
2. Both the 1994 and the 1996 studies used samples that were matched for age, current offense, prior offenses, and other characteristics.

3. Donna M. Bishop, et al., "The Transfer of Juveniles to Criminal Court: Does It Make a Difference?" *Crime and Delinquency*, 42(2), 1996, pp. 171-191.

4. Jeffrey Fagan, "The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders," *Law and Policy*, 18(1&2), 1996, pp. 77-114. The study compared 16-year-olds in New York who, by statute, are considered adults and are prosecuted in criminal court and 16-year-olds in nearby New Jersey who, by statute, are considered juveniles and prosecuted in juvenile court.

5. Both studies used samples that were matched for age, current offense, prior offenses, and other characteristics.

Exhibit 2-1 Violent Crime Index Arrest Rates for Juveniles, Ages 10-17, 1965-1995



Source: Federal Bureau of Investigation, *Age-Specific and Race-Specific Arrest for Selected Offenses, 1965-1992*; Federal Bureau of Investigation, *Uniform Crime Reports Program, 1993-1994*; and U.S. Department of Justice, "Remarks of Attorney General Janet Reno on the Decrease in Youth Violence in 1995," National Conference of State Legislatures.

Prepared by National Council on Crime and Delinquency.

Changes in Juvenile Laws

Exhibit 2-2 lists changes in juvenile laws that have occurred between 1994 and 1995. The most common change in State juvenile laws has been in transferring juveniles to the adult court system. States have increased the number of juveniles who are eligible for waivers by adding specific offenses and lowering the age limit of juvenile court jurisdiction. These actions have resulted in either juveniles being automatically waived or juvenile judges and/or prosecutors having more discretion in deciding which juveniles should be prosecuted as adults.

A number of States have changed their laws with regard to a juvenile's criminal record and/or court proceedings. The juvenile court has traditionally protected a juvenile by sealing his or her record and closing court proceedings. Some States have changed their policies on confidentiality of juvenile records to allow these records to be used in future adult court proceedings. In the past 2 years, 17 States have either opened the juvenile court proceedings to the public or opened juvenile records to the public or to selected law enforcement authorities.

A number of States have created laws that make the family, as well as the juvenile, more accountable for crimes committed. Fifteen States have created laws that force parents to take responsibility for the crimes of their children. Responsibilities can vary from State to State. For example, Idaho, Indiana, and New Hampshire passed legislation in 1995 that requires parents to pay fees toward their child's custody in a State institution or other care. Arizona, Illinois, and Oregon passed legislation in the same year that requires parents to pay court or supervision fees.

Florida and Texas have passed juvenile justice legislation that is equivalent to the "three strikes and you're out" laws in adult court systems. In these cases, the difference is that three strikes classifies an individual as an adult for court proceedings.

State Waiver Provisions

As mentioned earlier, most States are making it easier to transfer a juvenile to the adult court system. Three specific methods can be used to transfer a juvenile:

- ❑ Statutory exclusion laws, whereby legislation mandates that certain crimes automatically be transferred.
- ❑ Judicial waiver, whereby the juvenile judge decides to waive the juvenile.
- ❑ Prosecutorial discretion, whereby the prosecutor decides to try the juvenile as an adult.

Exhibit 2-3 presents a summary of specific changes States have made in each method of transferring a juvenile during the period from 1992 to 1995. Changes in statutory exclusion laws are increasing the number of juveniles who are automatically transferred. The circumstance of the offense, family situation, and history of the juvenile are irrelevant. Twenty-four States changed their statutory exclusion laws by adding crimes, and six States lowered the age at which a juvenile can be transferred. Four of these States both lower the age limit and added crimes.

With regard to judicial waivers whereby the decision to transfer is left up to the juvenile court judge, 10 States added crimes and 11 lowered the age limit. Of these, five States both lowered the age limit and added crimes.

Exhibit 2-4 provides a breakdown of the different provisions available to each State for transferring a juvenile to adult court as of 1995. The most standard provisions available were judicial waivers, which were used by 46 States and the District of Columbia. Based on certain criteria, such as the juvenile's age, current offense, criminal history, and amenability to rehabilitation, the juvenile court judge would decide whether to waive the juvenile to adult court.

Exhibit 2-2 Changes in State Juvenile Laws, 1994-1995

State	Transfer to Adult Court System ¹	Fingerprinting ²	Opening Juvenile Court ³	Parental Responsibility ⁴	Victims' Rights ⁵	Three Strikes ⁶
Alaska	◆					
Arizona	◆			◆	◆	
Arkansas	◆			◆		
California	◆		◆		◆	
Colorado	◆			◆		
Connecticut	◆	◆	◆			
Delaware	◆					
Florida	◆		◆	◆		◆
Georgia			◆			
Hawaii			◆			
Idaho	◆	◆	◆	◆		
Illinois	◆		◆	◆		
Indiana	◆		◆	◆		
Iowa	◆	◆				
Kansas ⁷						
Kentucky	◆		◆	◆	◆	
Louisiana	◆		◆	◆		
Maine					◆	
Maryland	◆	◆				
Massachusetts	◆					

1. This covers three types of specific changes: (1) statutory exclusion laws, whereby the legislature has mandated that certain types of crimes will automatically be transferred to adult court; (2) judicial waiver, whereby judges have the right to transfer youths; and (3) prosecutorial discretion, whereby prosecutors can determine which youths to send to adult courts.

2. Allowing juveniles to be fingerprinted.

3. Opening court proceedings to the public or opening juvenile records to the public or selected law enforcement authorities.

4. New laws forcing parents to take responsibility for the crimes of their children, sometimes paying fines or making restitution.

5. Extending victims' rights to juvenile courts, such as making sure victims can sit in on juvenile court sessions, or are notified of results, or in some cases are paid restitution.

6. Equivalents to the "three strikes and you're out" laws. Only in these cases it is three strikes and you are an adult.

7. States making changes other than those listed.

**Exhibit 2-2 Changes in State Juvenile Laws, 1994-1995
(continued)**

State	Transfer to Adult Court System ¹	Fingerprinting ²	Opening Juvenile Court ³	Parental Responsibility ⁴	Victims' Rights ⁵	Three Strikes ⁶
Minnesota	◆					
Mississippi	◆					
Missouri	◆	◆		◆	◆	
Montana ⁷						
Nevada	◆		◆			
New Hampshire	◆		◆	◆		
New Jersey	◆					
New Mexico	◆					
New York	◆					
North Dakota	◆		◆	◆	◆	
Ohio	◆		◆			
Oklahoma ⁷						
Oregon	◆	◆		◆		
Pennsylvania		◆	◆			
Rhode Island				◆		
South Carolina	◆					
Tennessee	◆					
Texas	◆	◆				◆
Utah	◆					
Vermont	◆			◆		
Virginia	◆	◆	◆		◆	
Washington ⁷						
West Virginia	◆		◆			
Wisconsin	◆					

Source: National Conference of State Legislatures.

Prepared by National Council on Crime and Delinquency.

Exhibit 2-3 Types of Judicial Waiver and Statutory Exclusion by State, 1992-1995

State	Judicial Waiver			Presumptive Waiver Enacted Provisions	Concurrent Jurisdiction Enacted/Modified	Statutory Exclusion		
	Added Crimes	Lowered Age Limit	Price Reward Prisons			Added Crimes	Lowered Age Limit	Other
Alabama						◆		
Alaska	◆		◆	◆				
Arkansas	◆				◆			
California	◆			◆				
Colorado			◆	◆	◆			
Connecticut						◆		
Delaware						◆		
District of Columbia				◆				
Florida					◆			
Georgia						◆		
Idaho		◆				◆		◆
Illinois				◆		◆		
Indiana						◆		
Iowa						◆		
Kansas						◆		
Kentucky						◆		
Louisiana					◆			
Maryland						◆		
Minnesota				◆		◆		
Mississippi						◆	◆	
Missouri	◆	◆						
Nevada		◆				◆	◆	
New Hampshire						◆		
New Mexico						◆		

**Exhibit 2-3 Types of Judicial Waiver and Statutory Exclusion
(continued) by State, 1992-1995**

State	Judicial Waiver			Presump- tive Waiver Enacted Provisions	Concurrent Juris- diction Enacted/ Modified	Statutory Exclusion		
	Added Crimes	Lowered Age Limit	Price Reward Prisons			Added Crimes	Lowered Age Limit	Other
North Carolina	◆	◆						
North Dakota				◆		◆		◆
Ohio	◆	◆						
Oklahoma							◆	
Oregon	◆	◆				◆	◆	
Penn- sylvania						◆		
Rhode Island						◆		
South Carolina	◆					◆	◆	
South Dakota				◆				
Tennessee	◆	◆						
Texas		◆						
Utah	◆				◆	◆		
Virginia		◆						
Washington						◆		
West Virginia		◆				◆		◆
Wisconsin		◆		◆			◆	
Wyoming					◆			

Source: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *State Responses to Serious and Violent Juvenile Crime*, July 1996.

Prepared by National Council on Crime and Delinquency.

Exhibit 2-4 Summary of Juvenile Transfer Provisions, 1995

State	Judicial Waiver	Prosecutor Waiver	Statutory Exclusion	Presumptive Waiver	Reverse Waiver	Once Waived/ Always Waived
Alabama	◆		◆			◆
Alaska	◆		◆	◆		
Arizona	◆			◆		
Arkansas	◆	◆			◆	
California	◆			◆		
Colorado	◆	◆		◆	◆	
Connecticut	1		◆		◆	
Delaware	◆		◆		◆	
District of Columbia	◆	◆	◆	◆		◆
Florida	◆	◆	◆			◆
Georgia	◆	◆	◆		◆	
Hawaii	◆		◆			◆
Idaho	◆		◆			◆
Illinois	◆		◆	◆		
Indiana	◆		◆			
Iowa	◆		◆			
Kansas	◆		◆			◆
Kentucky	◆		◆		◆	
Louisiana	◆	◆	◆			
Maine	◆					◆
Maryland	◆		◆		◆	
Massachusetts	◆			◆		
Michigan	◆	◆				
Minnesota	◆		◆	◆		
Mississippi	◆		◆		◆	◆
Missouri	◆					◆
Montana	◆		◆			
Nebraska		◆			◆	

1. Connecticut removed its judicial waiver provision in 1995.

**Exhibit 2-4 Summary of Juvenile Transfer Provisions, 1995
(continued)**

State	Judicial Waiver	Prosecutor Waiver	Statutory Exclusion	Presumptive Waiver	Reverse Waiver	Once Waived/ Always Waived
Nevada	◆		◆		◆	◆
New Hampshire	◆	◆		◆	◆	◆
New Jersey	◆					
New Mexico			◆			
New York			◆		◆	
North Carolina	◆		◆			
North Dakota	◆		◆	◆		
Ohio	◆		◆			◆
Oklahoma	◆		◆		◆	
Oregon	◆		◆			◆
Pennsylvania	◆		◆		◆	◆
Rhode Island	◆		◆	◆		
South Carolina	◆		◆		◆	◆
South Dakota	◆			◆		
Tennessee	◆		◆		◆	
Texas	◆		◆		◆	◆
Utah	◆	2	◆		◆	
Vermont	◆	◆	◆		◆	◆
Virginia	◆				◆	◆
Washington	◆		◆			
West Virginia	◆		◆		◆	
Wisconsin	◆		◆	◆		
Wyoming	◆	◆			◆	

2. Utah's direct-file statute was repealed in 1995.

Source: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *State Responses to Serious and Violent Juvenile Crime*, July 1996.

In 1995, prosecutorial waivers were used by 11 States. The prosecutor decides which court will have jurisdiction when both the juvenile court and the adult court have concurrent jurisdiction. The juvenile's age, current offense, criminal history, and amenability to rehabilitation may be used in making this determination.

Statutory exclusions were used by 36 States and the District of Columbia. Juveniles are automatically excluded from the juvenile court's original jurisdiction based on age and/or offense criteria. A number of States have lowered the upper age of original juvenile court jurisdiction.

Presumptive waivers were used by 12 States and the District of Columbia. These waiver provisions require that certain offenders, usually serious and violent offenders, be waived unless they can prove they would benefit more from the juvenile system.

Reverse waivers were allowed in 22 States. These waiver provisions allow the criminal court to transfer cases from adult court to juvenile court under certain circumstances. For example, a State may stipulate that a juvenile arrested for a specific type of crime has the option of using the reverse waiver.

Once a juvenile is waived to adult court, 17 States and the District of Columbia required all subsequent charges against that juvenile be prosecuted in adult court.

Summary

The juvenile court is becoming increasingly similar to the adult court system. Changing policies on fingerprinting juveniles, opening juvenile court proceedings to the public, and/or opening juvenile records that were once confidential are, in essence, creating a juvenile criminal history record.

Changes in States' waiver provision laws will result in an increasing number of juveniles prosecuted in the adult court system. States have made it easier for a juvenile to be automatically transferred by adding specific offenses and lowering the age that a juvenile can be transferred. In addition, States have made it easier for a juvenile judge to transfer a juvenile to the adult court system by adding more crimes and lowering the age limit.

These changes are disturbing, given that there is no evidence that prosecuting juveniles as adults reduces crime. In fact, research has shown that juveniles prosecuted as adults have higher recidivism rates than those who remain in the juvenile system. It is evident that changes in waiver provision laws have been based on public or political perception and not on empirical evidence.

Major Findings, Policy Implications, and Recommendations

Structured Sentencing Reform

The past decade has brought significant activity in sentencing reform in the adult criminal justice system. Most States have instituted reforms to increase the certainty of sentencing decisions by adopting mandatory sentencing provisions, truth in sentencing, determinate sentencing, or sentencing guideline systems (either voluntary/advisory or presumptive).

The impetus for many of these reforms has been the need to control sentencing disparity, increase truth in sentencing, and control correctional population growth. These reforms enable States to establish an overall policy on sentencing goals and to limit their investment in incarceration facilities. In view of the trend toward sentencing commissions over the past 15 years and the projected growth of prison populations, continued interest in structured sentencing models is likely.

Structured Sentencing Reform: Major Findings

Current Sentencing Practices

- ❑ An unprecedented number of structured sentencing reforms have taken place over the past two decades. The Federal Government and 17 States have implemented presumptive or voluntary/advisory sentencing guidelines.
- ❑ Another popular form of structured sentencing is mandatory minimum sentencing laws. All States employ some version of mandatory minimum sentencing laws, which target habitual offenders (“two or three strikes and you’re out”) and the crimes of possession of a deadly weapon (“use a gun—go to prison”), drunk driving, and possession and/or distribution of drugs.
- ❑ Most States continue to allow inmates to earn some form of good time credits either to reduce an inmate’s sentence or to advance an inmate’s parole eligibility date.
- ❑ Despite the level of criticism directed at parole, most States, including those that have adopted determinate and sentencing guideline models, have retained some form of discretionary release and postrelease supervision.

- ❑ Although several States have converted to guideline-based sentencing, most States do not use sentencing guidelines.

Sentencing Guideline Models: Purposes and Goals

- ❑ Virtually all guideline commissions were asked to meet the multiple goals of punishment (just deserts), deterrence, incapacitation, and rehabilitation.
- ❑ Few jurisdictions explicitly state a goal of eliminating disparity with respect to race, gender, or social or economic status.
- ❑ Only a few guideline commissions were required to consider the impact of guidelines on the need for future correctional resources (e.g., number of new prison beds).

Structured Sentencing Reform: Policy Implications

Reducing Disparity While Maintaining Discretion

The decision that a jurisdiction must make about its criminal justice laws will have a major impact on the quality of justice and cost to its citizens. If laws or commissions do not make these decisions, then they are left to judges who must determine not only what they perceive as just sentences, but also the best use of State and local correctional resources. A major question is whether the development of structured sentencing and presumptive sentencing guidelines, in particular, can overcome well-established organizational values that may facilitate and protect inequitable sentencing practices.

Displacement of Discretion

A key issue facing those attempting to control sentencing discretion is displacement of discretion from the courts to the prosecutors. The concern is that guidelines have merely shifted discretion from parole boards, prison officials, and judges to prosecutors. Little evidence exists to document how often this has occurred. Clearly, more research is needed in this area of sentencing reform.

Prison Crowding

To date, structured sentencing reforms have not had any appreciable effect on the problem of prison crowding. They could have an impact in the future. However, until the legislators and sentencing commissions can isolate pressures to get tough on crime, there is little reason to believe that structured sentencing models will solve the prison crowding problem.

Moreover, as State prisons remain crowded, they will continue to employ discretionary early release programs. Depending on how such programs are structured, attempts to reduce disparity may be lost in the determination of how much time similarly situated offenders will serve.

Structured Sentencing Reform: Recommendations

The purpose of this project was not to advocate one form of sentencing policy, whether it be presumptive guidelines, voluntary/advisory guidelines, determinate sentencing, or indeterminate sentencing. Disparity, incarceration rates, and prison crowding can be reduced by several sentencing reform measures. The question is how best to achieve these goals.

More research is needed to assess whether guidelines and other forms of structured sentencing reduce sentencing disparity. A number of States have implemented, or are about to implement, sentencing guidelines. Independent process evaluations and impact evaluations of these structured sentencing practices would be valuable to the field.

A better understanding is also needed concerning the effect of reforms that are external to the guidelines on sentencing disparity. Topics to be addressed include the impact of mandatory minimum provisions for certain drug crimes on disparity and the effect of guidelines on shifting discretion from the courts to the front end of the system (arrest, charging, and plea bargaining). Such studies will help clarify how best to correct undesirable and unequal sentencing practices.

Juvenile Justice Reforms

Changes in juvenile justice legislation have had an effect on the fundamental philosophy of the system. The juvenile court system is becoming increasingly similar to the adult court system. The juvenile court philosophy is one of punishment rather than of rehabilitation, particularly for violent crime. Emphasis has been shifting from the best interest of the child to the offense committed and societal interests. These changes can be linked to the public's concern over the increase in violent juvenile crime.

It is believed that the best way to handle juveniles who commit a violent crime is to hold them criminally responsible by treating and processing them as adults. States have been making it easier to accomplish this by adding specific offenses and lowering the age for prosecution in adult court.

Juvenile Justice Reforms: Major Findings

Changes in Juvenile Laws

- ❑ Thirty-five States have made it easier to transfer juveniles to the adult court by adding specific offenses for transfer and/or lowering the upper age limit of juvenile court jurisdiction.
- ❑ Some States have changed their policies on confidentiality of juvenile records to allow such records to be used in future adult court proceedings. Seventeen States have either opened juvenile court proceedings to the public or opened juvenile records to the public/selected law enforcement authorities.
- ❑ A number of States have created laws that make parents more accountable for crimes committed by their child or children. Responsibilities vary from State to State. For example, some States require parents to pay court or supervision fees or require parents to pay fees toward their child's custody in a State institution or other care.

State Waiver Provisions as of 1995

Three specific methods can be used to transfer a juvenile to adult court: (1) statutory exclusion laws, whereby legislation mandates certain crimes automatically be transferred; (2) judicial waiver, whereby the juvenile judge decides to waive the juvenile; and (3) prosecutorial discretion, whereby the prosecutor decides to try the juvenile as an adult.

- ❑ Twenty-four States changed their statutory exclusion laws by adding crimes, and six States lowered the age limit a juvenile can be transferred.
- ❑ Ten States changed their judicial waiver laws by adding crimes, and 11 lowered the age limit a juvenile can be transferred.

Current Transfer Provisions

- ❑ Forty-seven States and the District of Columbia had provisions for judicial waivers. The juvenile court judge makes the determination to waive the juvenile based on age, current offense, criminal history, and amenability to rehabilitation.
- ❑ Eleven States had provisions for prosecutorial waivers. The prosecutor decides which court will have jurisdiction when both the juvenile court and the adult court have concurrent jurisdiction. The juvenile's age, current offense, criminal history, and amenability to rehabilitation may be used in making this determination.

- ❑ Thirty-seven States and the District of Columbia had provisions for statutory exclusions. Juveniles are automatically excluded from the juvenile court's original jurisdiction based on age and/or offense committed.
- ❑ Twenty-two States have provisions for reverse waivers. These waiver provisions allow the criminal court to transfer cases from adult court to juvenile court under certain circumstances.
- ❑ Eighteen States and the District of Columbia require that once a juvenile is waived to adult court, all subsequent charges against him or her are to be prosecuted in adult court.

Juvenile Justice Reforms: Policy Implications

Changes in States' waiver provision laws will result in an increasing number of juveniles prosecuted in the adult court system. In addition, more juveniles will become eligible to be transferred when States add offenses and/or lower the age limit for which a juvenile can be waived. There is a great deal of discretion in deciding which juveniles should be waived when the juvenile judge and/or prosecutor make this determination.

The adult court system has had to address an increasing number of issues in regard to juveniles waived to the adult system. Policies for housing, pre-trial detention, programs and services, and obtaining copies of complete juvenile records need to be implemented in the adult court system as an increasing number of juveniles are waived.

Juvenile Justice Reforms: Recommendations

More research is needed to assess changes in the juvenile justice system. Changes in legislation should be driven not by public or political perception but by empirical evidence. Independent process evaluations and impact evaluations of States' waiver provision laws should be conducted prior to any revisions to legislation. Topics of research should include a comparison of recidivism rates, sentence length, and programs and services provided to juveniles waived to adult court and those that remain in juvenile court.

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Sources for Further Information

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