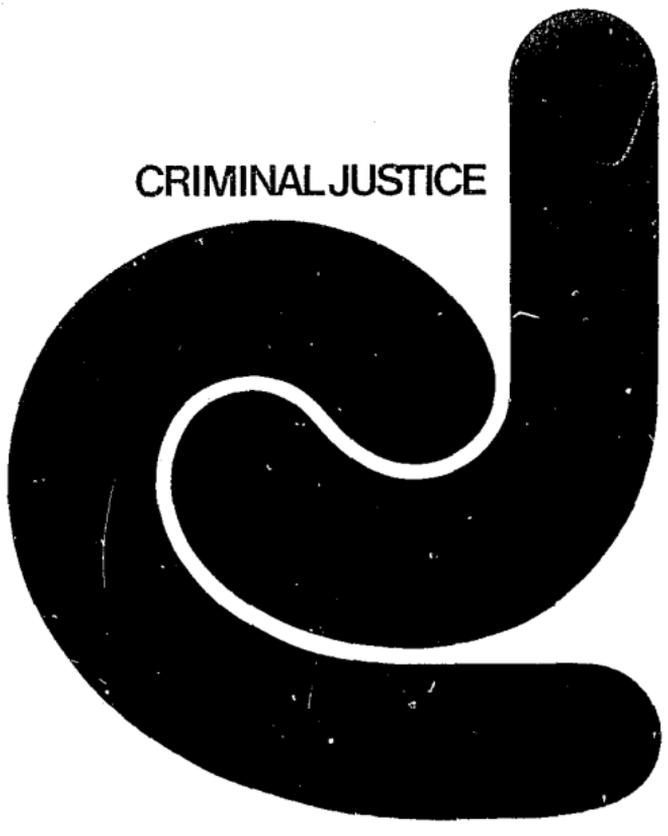




A Legislator's Guide to the Assessment of Criminal Justice Legislation

CRIMINAL JUSTICE

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The Council of State Governments

The Council is a joint agency of all the state governments — created, supported and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials and legislators; issues a variety of publications; assists in state-federal liaison; promotes regional and state-local cooperation and provides staff for affiliated organizations.

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Foreword

Development of sound criminal justice legislation requires an in-depth analysis of technically complex bills and an organized framework to analyze these various proposals. Out of the wide range of criminal justice legislation, the Council's Criminal Justice Information and Assistance Project selected four topics for specific treatment: firearms control, crime victim compensation, privacy and security of criminal justice information systems, and sentencing.

The guidance offered in this pamphlet on these four topics, in the form of suggested questions to be asked and points to be addressed for an informative response, should assist all those concerned with the quality of criminal justice legislation. Requests for subsequent topical discussions should be directed to the Council's project staff.

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Preface

The *Guide to Criminal Justice Legislation* has been developed with the advice and assistance of an advisory group consisting of legislators, legislative staff, and state criminal justice planning administrators. It is intended to be of assistance in the development of sound criminal justice legislation.

As originally conceived, the *Guide* was intended to cover only general considerations in the development of criminal justice legislation without focusing on specific issue areas. However, after reviewing this initial proposal, the consensus of the advisory group was that an intensive and concentrated treatment of currently significant criminal justice issues would be of more assistance than a generalized assessment pamphlet.

Although the advisory group made numerous suggestions, many of which have been included, project staff selected the four topical areas. If the *Guide* proves helpful, subsequent topical discussions could be developed. The enclosed topics were selected according to two criteria: (1) the volume of informational requests received by staff from 1974-75; and (2) the nature and extent of current legislative activity. When the wide range of criminal justice legislation was viewed from these perspectives, the following topics were selected: firearms control; crime victim compensation; privacy and security of criminal justice information systems; and sentencing.

The development of this *Guide to Criminal Justice Legislation* has benefited greatly from the critical review and comment of the advisory group. In fact, their enthusiastic participation and interest in the *Guide* was crucial to its successful completion. Their support is greatly appreciated.

Introduction

Crime continues to be identified by the public as one of the Nation's leading domestic issues. Most polls and attitude surveys in recent years have substantially documented this fact.

Although crime is an issue of national concern and, therefore, deserving of national attention, its reduction can realistically only be effectuated by a combined effort of state and local governments. This has been the approach of the federal government which, through congressional action, passed the Omnibus Crime Control and Safe Streets Act in 1968. Rather than establish another program of categorical grants, Congress directed in the act that a more flexible block grant program be administered by the Law Enforcement Assistance Administration. The flexibility of the block grant approach has enabled state and local governments to receive increased funding for their criminal justice systems while retaining the discretion and authority to attempt innovative crime reduction techniques.

Because state and local criminal justice systems find their authority based primarily in statutes passed by the respective Legislatures in the 50 States, these legislative bodies play a predominant and influential role in criminal justice reform. In fact, many of the standards proposed by the National Advisory Commission on Criminal Justice Standards and Goals will require specific legislative action for implementation.

A number of participants are involved in the legislative process of bill formulation, research and analysis, committee hearings, floor debates and, finally, the vote. Concerned citizen groups, private criminal justice organizations, the news media, criminal justice agency personnel, legislative staff and, most importantly, the legislators themselves determine, directly or indirectly, the quality of criminal justice legislation and the level of public understanding of criminal justice issues.

Legislation is often crucial to criminal justice change. Some legislation deals with very complex issues, but in the process of debate over specific bills, the issues frequently get confused by both proponents and opponents. Legislators and legislative staff find their time and expertise divided among many important public issues and, understandably, cannot always analyze in depth the technically complex bills which

come before them. Also, those testifying on legislation, whether agency personnel, criminal justice organizations, or private citizens, sometimes lack an organized framework by which to prepare testimony that will provide pertinent information to legislators.

The purpose of this pamphlet is to provide the various individuals and groups involved in the legislative process some guidance during the formulation and consideration of legislation in those criminal justice areas which are now most topical. To provide this guidance, an organizational structure is utilized consisting of a number of suggested questions which should be asked in assessing criminal justice legislation. Directly beneath these "questions" is a series of points which, when addressed, would constitute an informative response. This pamphlet is organized so that generalized provisions of a bill will be considered first, followed by a section of more specific bill provisions particularly applicable to each of four selected topic areas. Those topic areas which are currently the subject of major legislative interest are: (1) firearms control; (2) crime victim compensation; (3) privacy and security of criminal justice information systems; and (4) sentencing.

It is hoped that this legislative assessment pamphlet may be of service in the following ways: (1) to assist witnesses in preparation of testimony during legislative hearings; (2) to provide an analytical framework for legislative staff to research legislation; (3) to assist legislators in determining whether sufficient information for a serious bill analysis has been provided; and (4) to improve the understanding of the news media and public of criminal justice issues.

General Considerations in the Assessment of Criminal Justice Legislation

Why is this bill needed?

An appropriate answer to this question will:

- Describe the specific goals or objectives of the bill.
- Identify those who will benefit from the bill, those who will be adversely affected by the bill, and those who will not be covered by the bill.
- Describe the experience of other States with this or similar legislation.
- Note how the bill relates to established minimum professional standards.
- Note how the bill fits into the state criminal justice plan.

What is the legal status of the bill?

An appropriate answer to this question will:

- Note related legislation in this State or elsewhere.
- Note any conflict between this bill and existing law.
- Note other legislation, both federal and state, currently being considered that would complement or conflict with this bill.
- Indicate what constitutional issues might be raised if the bill were to be enacted.
- Explain how this bill will relate to problems of existing law.

What is the fiscal impact of the bill?

An appropriate answer to this question will:

- State the level of fiscal support required to implement the bill, both now and in the near future.
- Note any requirement for additional personnel and/or facilities if the bill becomes law.
- Detail how the necessary revenue will be raised.

How will provisions of the bill be implemented or enforced?

An appropriate answer to this question will:

- Explain the method to be used to monitor, evaluate and enforce compliance with provisions of the bill.
- Identify the agency that will have responsibility for implementing and/or enforcing the provisions of the bill.
- Describe the existing or potential capability of the enforcement agency to implement the bill.
- Describe what reorganization, if any, will be required by provisions of the bill.

What is the interagency and intergovernmental impact of the bill?

An appropriate answer to this question will:

- Explain the impact of this bill on laws, programs, and expenditures of other agencies or units of government.
- Explain what interjurisdictional problems, if any, will result.

1. Firearms Control

The subject of firearms control has been, and continues to be, a controversial and emotional issue. Although there has been significant opposition to gun control by various individuals and groups, opinion polls have indicated a growing public support for some form of control over the sale and possession of firearms.

Proponents of firearms control legislation have argued that controls on ownership of firearms would significantly reduce the number of impulsive or accidental gunshot-related deaths as well as aid in the prevention and reduction of violent crimes. Opponents have claimed that regulations have not succeeded in reducing violent crimes, and that any firearms regulation would ultimately benefit the criminal by disarming law-abiding citizens. The enforcement of gun control laws is cited as a problem because of the difficulty of regulating the personal possession of firearms in homes or places of business.

Despite the controversy, numerous States and localities have enacted laws designed to implement such control requirements as: registration of firearms, waiting periods, permits, license or identification cards for the purchase or possession of handguns, confiscation of illegally owned weapons, and mandatory consecutive penalties for gun-inflicted crimes.

The most common statutory approach has been to provide for the registration and licensing of firearms. These laws have not proved as effective as envisioned in reducing the number, flow, and use of firearms. As a result, many State Legislatures have moved toward consideration of more stringent proposals such as ownership prohibition and confiscation of handguns, as well as additional consecutive mandatory sentences for commission of crimes with firearms.

FIREARMS CONTROL

1. How are firearms to be defined?

An appropriate answer to this question will:

- If handguns are to be regulated, note the differences between standard handguns, such as pistols and revolvers, and "Saturday Night Specials" according to the following

physical criteria of the firearm in question:

- (a) Quality of material required to manufacture the handgun.
- (b) Safety devices.
- (c) Length and height (height measured right to barrel without magazine or extension).
- (d) Frame construction.
- (e) Weight.
- (f) Caliber.

- If rifles or shotguns are to be controlled, identify the size of barrel length for weapon to be considered in that category.

- Note if firearms to be regulated cover only concealable weapons or apply to all weapons, whether concealed or displayed openly.

- Specify if firearms to be covered include antiques made before a certain period (this period should be specified).

- Explain whether firearms to be covered include only those with a firing mechanism and which are capable of, which are designed to, or which may readily be converted to discharge a projectile or carry gas, vapor, or noxious substance.

2. To whom is bill directed?*

An appropriate answer to this question will:

- Note whether there are licensing requirements for manufacturers to produce, shippers to transport, assemblers to assemble, and dealers (wholesale and retail) to sell firearms or firearm parts and, if so, what are the respective licensing fees and the duration of the license.

- For bills directed toward manufacturers of firearms, note if they are prohibited from the manufacture of certain firearms or sale of certain firearm parts (the type should be specified) to assemblers and/or wholesale and retail dealers (as distinguished from manufacture and sale to law enforcement agencies or military personnel).

- For bills directed at regulating firearms shippers, note:

- (a) If they are prohibited from importing or exporting firearm parts for their subsequent assemblage.
- (b) If transport into and within the State of certain firearms (which should be specified) may only be done by licensed shippers to licensed dealers.

- Specify whether individuals will be prohibited from bringing firearms into State.

*Responses to this question will vary according to the type of firearm covered as defined by the criteria enumerated under question Number 1.

- For bills directed at regulating firearms assemblers, note if there are prohibitions or restrictions for assembling parts into particular categories of firearms. (This information should be related to any regulations or prohibitions regarding the purchase of firearms.)

- For bills directed at sellers (both wholesalers and retail dealers) of firearms, note:

- (a) If the dealer must be responsible for keeping records of his sale of firearms or firearm parts, as well as the record of the buyer to whom he sells the firearm(s).
- (b) If the dealer must maintain such records, to what agency, state or local, and in what time period must the information be transmitted.
- (c) If there are restrictions on the types of firearms and ammunition the dealer can sell.
- (d) If there are prohibitions or restrictions on firearms sales to certain types of people.
- (e) If purchase of a firearm may be transacted by mail or must be done in person.
- (f) If the dealer must secure certain documentation from the buyer regarding his character and background prior to sale of a firearm.
- (g) If there is a waiting period required between purchase and delivery of firearms and specify the time period and its intended purpose (e.g., is the purpose for a "cooling-off period" or to enable the dealer to inquire into the purchasing applicant's background, or both).
- (h) If there is tort liability to be incurred for damages or injuries inflicted by buyer who purchases from the seller.

- For bills directed at owners of firearms:

- (a) Specify any licensing requirements to obtain, carry, or use a firearm; any categories of individuals excluded from licensing requirements (e.g., law enforcement agencies or military personnel); and any categories of individuals excluded or prohibited from owning firearms (e.g., juveniles, ex-offenders, violence-prone individuals, mental patients).
- (b) Identify the types of firearms to be registered as well as any types of weapons which may not be owned or possessed.
- (c) Note whether an owner is required to report a missing firearm to the police or a designated firearm control agency.
- (d) Describe any prohibitions on transfer, sale, or loan of unregistered firearms.

- Note if there is a requirement for those possessing a

firearm, but not owning one, to register the weapon and/or themselves.

- Specify if the person finding a firearm is required to register the weapon, or in lieu of registering, turn it in to the police or another designated firearms control agency.

- For bills directed at those registering firearms, note where and under what conditions the permit specifies that firearms may be carried.

3. Are the sanctions provided appropriate to achieve the objective sought?

An appropriate answer to this question will:

- Note if there are provisions for confiscation of unregistered and/or illegally owned or possessed firearms.

- Identify what penalties will be provided for any or all of the following:

- (a) Illegal manufacture, transport, assemblage, or sale of firearms.

- (b) Failure of an individual to register himself and/or the firearms he owns or possesses.

- (c) Illegally carrying a firearm.

- (d) Use of a firearm in the commission of a crime.

- Specify whether penalties are concurrent or consecutive to other sentences which may be imposed.

- Specify whether penalties are to be mandatory or whether the judge may choose from a range of penalties.

4. Is the proposed legislation enforceable and what level of proof is required for arrest and conviction?

An appropriate answer to this question will:

- Note if there is other state legislation providing for police discretion in stop and frisk searches of persons and searches of automobiles for illegal firearms.

- Note if there will be education and publicity campaigns to inform the public about the provisions of the proposed firearms control legislation.

- State what evidence is required for conviction if a firearm is used in commission of, or with the intent to, commit a crime.

- State what level of evidence is required to obtain a conviction for failure of the owner or possessor to register with the licensing authority.

2. Crime Victim Compensation

Although all levels of society are affected by the spiraling crime rate in this country within the past decade, individuals who are least able to absorb the loss are those most likely to become victims of crime. While burglary and other forms of theft deplete the resources of families, victims of violent crime frequently suffer the most severe losses. Temporary injury, permanent disability, or loss of life can result in large expenditures by victims or families for hospitalization and medical care. In instances of permanent disability, further costs may be incurred for rehabilitation training. During periods of recuperation or as a consequence of death, families suffer from further economic hardship and deprivation.

Although victims of crimes and their families suffer losses which frequently exhaust their financial resources, their needs have historically been overlooked by state criminal justice systems. Until recent years, state efforts have almost exclusively emphasized criminal apprehension and paid little attention to the plight of the victims, forcing them to rely on civil remedies for recovery of their losses. Theoretically, the victim can collect damages from the offender through civil action but, as is often the case, the perpetrator of the crime either has not been apprehended, has been incarcerated, or has no resources from which to reimburse the victim for damages inflicted. Consequently, the victims of crime and their families are not likely to recover any of their losses from the perpetrators of the crime.

Several States recently have assumed the responsibility for instituting programs which will assist victims of crimes. Although compensation will not necessarily enable victims to recover all their losses, these programs may provide sufficient relief to mitigate the more serious financial consequences of crime.

CRIME VICTIM COMPENSATION

1. How is a victim defined?

An appropriate answer to this question will:

- Note the nature of crime covered for a person to be considered a direct victim eligible for compensation.

- Specify if "good samaritans" who sustain injury or

death while trying to prevent a crime are to be considered victims.

- Note if relatives or persons living or sharing a household or maintaining sexual relations with an offender may be considered victims, and under what circumstances.
- Specify, for purposes of compensation, what family relationships will be included in the definition of family.
- Note if a direct victim is only one who suffers physical injury or death or if it extends to those not suffering physical harm but incurring pecuniary losses as a result of physical injury or death of another.

2. To whom is compensation to be made?

An appropriate answer to this question will:

- Note if those financially responsible for or dependent upon those defined as direct victims are eligible, and if so, under what conditions and circumstances do they attain eligibility.
- Note if relatives other than those having a financial relationship are eligible for compensation.
- Describe any police reporting and claimant filing time requirements.
- Note if the provisions of the bill are retroactive.
- Note if bill prohibits compensation to those injured or killed while participating in illegal activity.
- Note if the inability to identify the offender or refusal to cooperate with criminal justice agencies would affect the right to compensation.

3. How is compensation to be determined?

An appropriate answer to this question will:

- Identify what pecuniary losses are to be covered.
- Specify any minimum financial loss eligibility requirements for claimants.
- Note whether need of the claimant is a factor in determining compensation.
- Note whether provocation or negligence by the victim is a factor in reducing or rejecting compensation.
- Note whether there is a deductible amount applied in determining compensation.

4. How is the compensation fund to be financed?

An appropriate answer to this question will:

- Specify whether a legislative appropriation will be the sole source of funding or whether the appropriation will be supplemented by other revenues such as court fines.
- Specify whether the legislative appropriation will be from general or specially earmarked revenues.

5. Does the bill adequately describe application and appellate procedures?

An appropriate answer to this question will:

- Describe the composition of the agency awarding claims and the method of selecting personnel.
- Note whether the agency has sufficient powers to determine facts, compel the presence of witnesses and records, punish for perjury and contempt, and ensure the presence of legal counsel, if necessary.
- Set forth the decision-making process, from the initial applicant claim through final determination.
- Describe any time limitations on reporting a crime to the police and in filing a claim.
- Identify the agency or court to which appeals may be directed.
- Specify what time limitations are for claimants to appeal adverse rulings.
- Designate the appropriate claimant in the event of the death of the victim or whose family members have suffered economic loss.

6. Does the bill contemplate other sources of compensation?

An appropriate answer to this question will:

- Note whether there is a provision for restitution to the victim by a convicted offender, and whether such collateral payments affect the victim's right to compensation.
- Note whether compensation to the victim or his family will be reduced if they receive compensation for crime-related injury or loss from insurance (life, health, accident, hospitalization, and income protection) or other sources.
- Specify whether processing of claims will be delayed pending the settlement of collateral claims against the perpetrator or insurance agencies, or whether there must be prompt payment of the claim with a provision for reimbursement.

- Note if the bill precludes insurance companies from citing the existence of the Victim Compensation Fund as justification for disallowance of a victim's claim.

- Note if the bill grants the authority to the agency to bring legal action in the name of the victim in order to require restitution or compensation from the perpetrator, victim's employer, insurance agencies, governmental agencies administering other compensation funds, or other sources of legitimate compensation.

7. Does the bill provide for public information and education?

An appropriate answer to this question will:

- Note whether a new or existing agency will provide liaison, information, and educational services to the public on crime compensation programs.

- Note whether police, courts, prosecutors, hospitals, or physicians will be required to inform victims and their families of the existence of crime compensation programs.

3. Privacy and Security of Criminal Justice Information Systems

The rapid rise in computerization of information has brought with it increased concern for the issues of privacy and security. The potential harm to individual privacy resulting from collection, maintenance, use, and dissemination of criminal offender information cannot be minimized. The opportunities for individuals accused or convicted of crime to secure employment, insurance, credit, social benefits, and their rights to due process and other legal protections may be significantly damaged by the misuse of information contained in criminal case records.

As such, State Legislatures are likely to be asked increasingly in coming years to consider legislation dealing with the issue of privacy and security of criminal justice information systems. The debate over legislation in this area will likely focus on the following major policy questions: (1) what types of data should criminal justice agencies and courts be allowed to collect and compile; (2) which governmental agencies or personnel, both within and without the criminal justice system, should be permitted access to criminal justice information; and (3) under what conditions should offender-based records be removed, sealed, or expunged.

Corollary questions arising from these debates concern whether incomplete criminal case records should be removed from all files and whether an individual should be afforded the right to inspect, to challenge and if erroneous, to correct data contained in his record.

PRIVACY AND SECURITY OF CRIMINAL JUSTICE RECORDS

1. What type of, by whom, and by what methods shall information be exchanged?

An appropriate answer to this question will:

- Note whether juvenile records are included.
- Identify those agencies that will be considered, for purposes of definition, to be part of the criminal justice system.

- Specify the types of information which shall or shall not be exchanged between agencies (e.g., intelligence files, work product, or active case files).

- Specify the agencies which shall be responsible for maintaining and updating all types of records available for access by and exchange with other agencies, whether maintained in centralized or decentralized files.

- Note the procedures for exchanging data and specifically outline the process by which data finally enters an individual's permanent record.

2. Who has the right to access and for what purposes?

An appropriate answer to this question will:

- Note the types of data which will be available for access by specified agencies and their personnel, and under what circumstances.

- Note the conditions under which agencies other than those in the criminal justice system will be permitted access.

- Note what interfacing requirements and safeguards are to be placed upon federal access to the state criminal justice information systems.

- Define what comprises "record" or "record system."

- State how the existing definition of public record affects the power of the Legislature to restrict access to such records.

3. Are there procedures for a person to inspect, correct, add, or delete information in his file?

An appropriate answer to this question will:

- Note whether an individual has the right to inspect his file, correct erroneous information contained in it, and to control dissemination of his file information.

- Specify whether there is an agency or board established to hear and decide upon individual challenges of incorrect or incomplete records.

- Explain whether the process for correction of inaccurate or incomplete records involves complete erasure of the incorrect entry or the storage of a new record along with the initial file.

- Describe what responsibility an agency has for notifying other agencies with whom they exchange information about corrections that have been entered.

- Note whether an individual may appeal an adverse ruling on challenges, and the procedures for such appeals.

- Identify types of data an individual may inspect.

4. How are records to be expunged? By whom?

An appropriate answer to this question will:

- Note whether there will be complete expungement of records or if they are to be sealed and stored.

- Specify what time prerequisites for expungement will be established.

- Detail what types of records are to be expunged (i.e., arrest records without court disposition, conviction records, only violent offenders, expungement of name with retention of record).

- Note who must make judgment on the expungement request and how a decision to expunge would be implemented.

5. Are there sanctions imposed upon the owners and users of the information for its illegal use?

An appropriate answer to this question will:

- Delineate what are legal and illegal uses of data.

- Identify where the ownership of the data resides (i.e., does the data belong to the courts, police, or is it owned by the individual).

- Note what sanctions, if any, are imposed upon governmental agencies, private organizations, or individuals for misuse of data.

- Note if there are differential penalties proposed for varying degrees of misuse.

- Note if criminal or civil penalties, or both, should be applied for illegal use of data.

- Note whether responsibility for ensuring the proper use of data will be exercised by a centralized state board, the courts, or by individual criminal justice agencies.

4. Sentencing

Because of indeterminate sentencing as well as the practice of plea bargaining, prosecutors and judges in most States are permitted considerable discretion in the sentencing of criminal offenders. While such discretion enables judges to take into account mitigating and extenuating circumstances, it also can have significant impact on current and future criminal behavior.

Opponents of indeterminate sentences argue that disparities in sentences received by criminal defendants for similar offenses—especially in cases where unusually harsh penalties have been levied—can often impede motivation or incentive for rehabilitation for some offenders by instilling a sense of unfairness and an attitude of bitterness toward the criminal justice system. At the same time, when the offender receives a light sentence, disproportionate to his crime, the deterrent effect of criminal law may be considerably reduced for him as well as for potential offenders. A more immediate and concrete threat to public safety may result from the failure to confine some offenders for an adequate time period.

Concern over the deterrence factor, as well as the issue of public safety, has led some State Legislatures to seriously consider major changes in their sentencing laws. In this regard, there have been three basic proposals for sentencing change—flat-time sentencing, mandatory minimum sentencing, and mandatory maximum sentencing. Mandatory minimum and flat-time sentencing laws, in varying degrees, restrict judicial authority to alter legislatively established penalties. Mandatory maximum sentencing allows a judge to establish a flat-time sentence for an offense so long as that sentence does not exceed the statutory maximum.

In addition to suspended sentences or probation, which may or may not be imposed by judges, other discretionary decision-making by criminal justice officials also impact upon flat-time or mandatory sentencing approaches. Plea bargaining practices, temporary release programs, early release for good behavior, and parole can each affect the time actually served by an offender. In drafting and considering such sentencing approaches, Legislatures must determine to what extent discretion should be retained and still maintain consistency with purposes of the legislation.

SENTENCING

1. How would the actual time served be affected?

An appropriate answer to this question will:

- Note if judges are permitted to suspend sentences or award probation or shock probation, and under what circumstances.
- Note if pre-trial detention time will be applied toward the sentence served.
- Note whether any restrictions on plea bargaining will be included.
- State if sentences to be served are to be consecutive or concurrent with other sentences which may be imposed.
- Note if judges are permitted to increase any minimum or decrease any maximum sentence which must be imposed according to law.
- Note if good time earned by inmates may be applied in reducing the time to be served under the sentence.
- State if those serving definite sentences are eligible for temporary release programs such as furlough and work release.
- Note what provision, if any, is made for parole when a judge sentences to more than a mandatory minimum sentence.

2. To whom will the bill apply and will there be any exclusionary provisions?

An appropriate answer to this question will:

- Specify whether legislation would apply to first or to subsequent offenders, or if mandatory sentences are absolute for all offenders.
- Note what distinctions, if any, the bill makes for sentencing dangerous and non-dangerous offenders.
- Note if sentences may be reviewed by the sentencing judge or other sentencing authority and, if so, under what circumstances or conditions.
- Note if special facilities other than correctional institutions may be utilized in instances of illness or other infirmities.
- Specify if mandatory or flat-time sentences may be imposed on juvenile offenders.

END