



Criminal Justice Information Policy

Statutes Requiring the Use of Criminal History Record Information

129896

Bureau of Justice Statistics reports

(Revised April 1991)

Call toll-free 800-732-3277 (local 301-251-5500) to order BJS reports, to be added to one of the BJS mailing lists, or to speak to a reference specialist in statistics at the Justice Statistics Clearinghouse, National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850.

BJS maintains the following mailing lists:

- Law enforcement reports (new)
- Drugs and crime data (new)
- Justice spending & employment
- White-collar crime
- National Crime Survey (annual)
- Corrections (annual)
- Courts (annual)
- Privacy and security of criminal history information and information policy
- Federal statistics (annual)
- BJS bulletins and special reports (approximately twice a month)
- Sourcebook of Criminal Justice Statistics (annual)

Single copies of reports are free; use NCJ number to order. Postage and handling are charged for bulk orders of single reports. For single copies of multiple titles, up to 10 titles are free; 11-40 titles \$10; more than 40, \$20; libraries call for special rates.

Public-use tapes of BJS data sets and other criminal justice data are available from the National Archive of Criminal Justice Data (formerly CJAIN), P.O. Box 1248, Ann Arbor, MI 48106 (toll-free 1-800-999-0960).

National Crime Survey

The Nation's two crime measures: Uniform Crime Reports and the National Crime Survey, NCJ-122705, 4/90

Criminal victimization in the U.S.:

1988 (final), NCJ-122024, 10/90

1987 (final report), NCJ-115524, 6/89

BJS special reports

Handgun crime victims, NCJ-123559, 7/90

Black victims, NCJ-122562, 4/90

Hispanic victims, NCJ-120507, 1/90

The redesigned National Crime Survey:

Selected new data, NCJ-114746, 1/89

Motor vehicle theft, NCJ-109978, 3/88

Elderly victims, NCJ-107676, 11/87

Violent crime trends, NCJ-107217, 11/87

Robbery victims NCJ-104638, 4/87

Violent crime by strangers and non-strangers, NCJ-103702, 1/87

Preventing domestic violence against women, NCJ-102037, 8/86

Crime prevention measures, NCJ-100438, 3/86

The use of weapons in committing crimes, NCJ-99643, 1/86

Reporting crimes to the police, NCJ-99432, 12/85

Locating city, suburban, and rural crime, NCJ-99535, 12/85

The economic cost of crime to victims, NCJ-93450, 4/84

Family violence, NCJ-93449, 4/84

BJS bulletins:

Criminal victimization 1989, NCJ-125615, 10/90

Crime and the Nation's households, 1989, NCJ-124544, 9/90

The crime of rape, NCJ-96777, 3/85

Household burglary, NCJ-96021, 1/85

Measuring crime, NCJ-75710, 2/81

BJS technical reports

New directions for the NCS, NCJ-115571, 3/89

Series crimes: Report of a field test, NCJ-104615, 4/87

Female victims of violent crime, NCJ-127187, 1/91
Redesign of the National Crime Survey, NCJ-111457, 3/89
The seasonality of crime victimization, NCJ-111033, 6/88
Crime and older Americans Information package, NCJ-104569, \$10, 5/87
Teenage victims, NCJ-103138, 12/86
Victimization and fear of crime: World perspectives, NCJ-93872, 1/85, \$9.15
The National Crime Survey: Working papers, vol. I: Current and historical perspectives, NCJ-75374, 8/82
vol. II: Methodology studies, NCJ-90307

Corrections

BJS bulletins and special reports:
Capital punishment 1989, NCJ-124545, 10/90
Violent State prison inmates and their victims, NCJ-124133, 7/90
Prisoners in 1989, NCJ-122716, 5/90
Prison rule violators, NCJ-120344, 12/89
Capital punishment 1988, NCJ-118313, 7/89
Recidivism of prisoners released in 1983, NCJ-116261, 4/89
Drug use and crime: State prison inmate survey, 1986, NCJ-111940, 7/88
Time served in prison and on parole 1984, NCJ-108544, 12/87
Profile of State prison inmates, 1986, NCJ-109926, 1/88
Imprisonment in four countries, NCJ-103967, 2/87
Population density in State prisons, NCJ-103204, 12/86
State and Federal prisoners, 1925-85, NCJ-102494, 11/86
Prison admissions and releases, 1983, NCJ-100582, 3/86
The prevalence of imprisonment, NCJ-93657, 7/85

National corrections reporting program, 1985, NCJ-123522, 12/90

Prisoners at midyear 1990 (press release), 10/90

Correctional populations in the U.S.:

1988, NCJ-124280, 3/91
1987, NCJ-118762, 12/89

1986, NCJ-111611, 2/89

Historical statistics on prisoners in State and Federal Institutions, yearend 1925-86, NCJ-111098, 6/88

1984 census of State adult correctional facilities, NCJ-105585, 7/87

Census of jails and survey of jail inmates: BJS bulletins and special reports:

Jail inmates, 1989, NCJ-123264, 6/90
Population density in local jails, 1988, NCJ-122299, 3/90

Census of local jails, 1988 (BJS bulletin), NCJ-121101, 2/90

Jail inmates, 1987, NCJ-114319, 12/88

Drunk driving, NCJ-109945, 2/88

Jail inmates, 1986, NCJ-107123, 10/87

Census of local jails 1988, vol. I, Summary, NCJ-127992, 4/91

Census of local jails, 1983: Data for individual jails, vols. I-IV, Northeast, Midwest, South, West, NCJ-112796-9; vol. V. Selected findings, methodology, summary tables, NCJ-112795, 11/88

Our crowded jails: A national plight, NCJ-11846, 8/88

Parole and probation

BJS bulletins
Probation and parole:

1989, NCJ-125833, 11/90

1988, NCJ-119970, 11/89

Setting prison terms, NCJ-76218, 8/83

BJS special reports
Recidivism of young parolees, NCJ-104916, 5/87

Children in custody

Census of public and private juvenile detention, correctional, and shelter facilities, 1975-85, NCJ-114065, 6/89

Survey of youth in custody, 1987 (special report), NCJ-113365, 9/88

Law enforcement management

BJS bulletins and special reports:
Police departments in large cities, 1987, NCJ-119220, 8/89
Profile of state and local law enforcement agencies, NCJ-113949, 3/89

Expenditure and employment

BJS bulletins:
Justice expenditure and employment: 1988, NCJ-123132, 7/90
Anti-drug abuse formula grants: Justice variable pass-through data, 1988 (BJS Technical Report), NCJ-120070, 3/90
Justice expenditure and employment: 1985 (full report), NCJ-106356, 8/89
Extracts, 1984, 1985, 1986, NCJ-125619, 4/91
Extracts, 1982 and 1983, NCJ-106629, 8/88

Courts

BJS bulletins:
Pretrial release of felony defendants, 1988, NCJ-127202, 2/91
Felony sentences in State courts, 1988, NCJ-126923, 12/90
Criminal defense for the poor, 1986, NCJ-112919, 9/88
State felony courts and felony laws, NCJ-106273, 8/87
The growth of appeals: 1973-83 trends, NCJ-96381, 2/85
Case filings in State courts 1983, NCJ-95111, 10/84
BJS special reports:
Felony case processing in State courts, 1988, NCJ-121753, 2/90
Felony case-processing time, NCJ-101985, 8/86
Felony sentencing in 18 local jurisdictions, NCJ-97681, 6/85

Felons sentenced to probation in State courts, 1986, NCJ-124944, 11/90

Felony defendants in large urban counties, 1988, NCJ-122385, 4/80

Profile of felons convicted in State courts, 1986, NCJ-120021, 1/90

Sentencing outcomes in 28 felony courts, NCJ-105743, 8/87

National criminal defense systems study, NCJ-94702, 10/86

The prosecution of felony arrests:

1987, NCJ-124140, 9/90

1986, NCJ-113248, 6/89

Felony laws of the 50 States and the District of Columbia, 1986, NCJ-105066, 2/88, \$14.60

State court model statistical dictionary, Supplement, NCJ-98328, 9/85
1st edition, NCJ-62320, 9/80

Privacy and security

Compendium of State privacy and security legislation:

1989 overview, NCJ-121157, 5/90

1987 overview, NCJ-111097, 9/88

1989 full report (1, 500 pages, microfiche \$2, hard copy \$145), NCJ-121158, 9/90

Criminal Justice Information Policy:

Survey of criminal history information systems, NCJ-125620, 3/91

Original records of entry, NCJ-125626, 12/90

BJS/SEARCH conference proceedings:

Criminal justice in the 1990's: The future of information management, NCJ-121697, 5/90

Juvenile and adult records: One system, one record?, NCJ-114947, 1/90

Open vs. confidential records, NCJ-113560, 1/88

Strategies for improving data quality, NCJ-115339, 5/89

Public access to criminal history record information, NCJ-111458, 11/88

Juvenile records and recordkeeping systems, NCJ-112815, 11/88

Automated fingerprint identification systems: Technology and policy issues, NCJ-104342, 4/87

Criminal justice "hot" files, NCJ-101850, 12/86

Crime control and criminal records (BJS special report), NCJ-99176, 10/85

Drugs & crime data:

State drug resources: A national directory, NCJ-122582, 5/90
Federal drug data for national policy, NCJ-122715, 4/90
Drugs and crime facts, 1989, NCJ-121022, 1/90

Computer crime

BJS special reports:
Electronic fund transfer fraud, NCJ-96666, 3/85
Electronic fund transfer and crime, NCJ-92650, 2/84
Electronic fund transfer systems fraud, NCJ-100461, 4/86
Expert witness manual, NCJ-77927, 9/81, \$11.50

Federal justice statistics

Federal criminal case processing, 1980-87, Addendum for 1988 and preliminary 1989, NCJ-125616, 11/90
Compendium of Federal justice statistics 1986, NCJ-125617, 1/91
1985, NCJ-123560, 8/90
1964, NCJ-112816, 9/89
The Federal civil justice system (BJS bulletin), NCJ-104769, 8/87

Federal offenses and offenders

BJS special reports:
Immigration offenses, NCJ-124546, 8/90
Federal criminal cases, 1980-87, NCJ-118311, 7/89
Drug law violators, 1980-86, NCJ 111763, 6/88
Pretrial release and detention:
The Ball Reform Act of 1984, NCJ-109929, 2/88
White-collar crime NCJ-106876, 9/87

General

BJS bulletins and special reports:
BJS telephone contacts, '91, NCJ-124547, 4/91
Tracking offenders, 1987, NCJ-125315, 10/90
Criminal cases in five states, 1983-86, NCJ-118798, 9/89
International crime rates, NCJ-110776, 5/88
Tracking offenders, 1984, NCJ-109686, 1/88
Tracking offenders: White-collar crime, NCJ-102867, 11/86
Police employment and expenditure, NCJ-100117, 2/86
Violent crime in the United States, NCJ-127855, 3/91
Attorney General's program for improving the Nation's criminal history records and identifying felons who attempt to purchase firearms, NCJ-128131, 3/91
BJS data report, 1989, NCJ-121514, 1/91
Sourcebook of criminal justice statistics, 1989, NCJ-124224, 9/90
Publications of BJS, 1985-89:
Microfiche library, PRO30014, 5/90, \$190
Bibliography, TBO30013, \$17.50
Publications of BJS, 1971-84:
Microfiche library, PRO30012, \$203
Bibliography, TBO30012, \$17.50
1990 directory of automated criminal justice information systems, Vol. 1, Corrections; 2, Courts; 3, Law enforcement; 4, Probation and parole; 5, Prosecution; NCJ-12226-30, 5/90
BJS annual report, fiscal 1988, NCJ-115-19, 4/89
Report to the Nation on crime and justice: Second edition, NCJ-105506, 6/88
Technical appendix, NCJ-112011, 8/88
Criminal Justice microcomputer guide and software catalog, NCJ-112178, 8/88
National survey of crime severity, NCJ-96017, 10/85

See order form on last page



129896

Criminal Justice Information Policy

Statutes Requiring the Use of Criminal History Record Information

June 1991, NCJ-129896

129896

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been

granted by

Public Domain/CJP/BJS

U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Steven D. Dillingham, Ph.D.
Director

Acknowledgments. This report was prepared by SEARCH Group, Inc., Gary L. Bush, Chairman, and Gary R. Cooper, Executive Director. The project director was Sheila J. Barton, Director, Law and Policy Program. This report was prepared by Paul L. Woodard, Senior Counsel. The federal project monitor was Carol G. Kaplan, Chief, Federal Statistics and Information Policy Branch, Bureau of Justice Statistics.

Report of work performed under BJS Grant No. 87-BJ-CX-K079, awarded to SEARCH Group, Inc., 7311 Greenhaven Drive, Suite 145, Sacramento, California 95831. Contents of this document do not necessarily reflect the views, policies or legal analyses of the Bureau of Justice Statistics or the U.S. Department of Justice. Summaries and paraphrasings of legal provisions are those of the author.

Copyright © SEARCH Group, Inc. 1991

The U.S. Department of Justice authorizes any person to reproduce, publish, translate or otherwise use all or any part of the copyrighted material in this publication with the exception of those items indicating that they are copyrighted or reprinted by any source other than SEARCH Group, Inc.

The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

Table of Contents

Introduction 1

Overview 1

Structure and Content 2

Table 1 Summary of state statutes requiring the use of criminal history record information by state and category 3

Part I: Bail Decisions 5

Table 2 Statutes requiring or permitting prior criminal records to be considered in bail decisions 7

Part II: Sentencing 11

Upgraded Charges 11

Enhanced Sentences 12

Habitual Offenders 13

Probation Eligibility 14

Presentence Reports 15

Table 3 Statutes providing for upgraded charges for offenders with prior convictions 17

Table 4 Statutes providing for enhanced sentences for offenders with prior convictions 24

Table 5 Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals 36

Table 6 Statutes that require or permit consideration of prior criminal history in decisions concerning probation 42

Table 7 Statutes authorizing presentence reports that shall or may include prior convictions 47

Part III: Correctional Classifications 51

Table 8 Statutes authorizing consideration of criminal history in correctional classification and supervision 52

Part IV: Parole Eligibility 55

Table 9 Statutes providing that parole eligibility shall or may be affected by prior convictions 57

Part V: Possession of Firearms by Convicted Felons 63

Table 10 Statutes making possession of a firearm by a convicted felon a criminal offense 64

Part VI: Criminal History Record Databases 67

Appendix

List of Official Code Compilations to Which Citations Refer 71

Introduction

Overview

This report compiles and describes Federal and State laws¹ dealing with crimes and criminal procedures that require for their implementation information about an offender's past criminal involvement. Included are provisions dealing with possession of firearms or other deadly weapons by convicted felons, release of arrested persons on bail, charging and sentencing of offenders, correctional classification of sentenced offenders and the release of offenders on probation or parole. All of the laws listed in the 10 tables in the report expressly refer to criminal history record information as a required or permissible basis for decisionmaking. All of them either provide that such information shall or may be made available to particular officials for particular criminal justice purposes or require that past criminal conduct shall or may be considered in making particular decisions affecting offenders.

As Table 1 shows, all of the States and the Federal government have at least several laws that require designated criminal justice practitioners to consider past criminal records in carrying out their duties and many States have one or more provisions of every type of statute discussed in this report. This extensive body of laws emphatically demonstrates the extent to which the effective operation of the criminal justice system depends upon the timely availability of accurate and complete information about the past

criminal involvement of persons processed through the system. From the initial police encounter with law-breakers or suspects to the final decision by corrections officials to release sentenced offenders from supervision, the criminal history record, more than any other document, is the foundation for criminal justice decisionmaking. In order to properly implement the statutes collected in this report, police, prosecutors, judges and corrections officials must be able to determine, accurately and in a timely manner, not only whether particular individuals have prior records, but also the extent and nature of prior criminal involvement, including such matters as whether arrested individuals were charged, prosecuted and convicted; what the conviction offense was; whether it was a felony; whether it involved violence or the use of a weapon; whether the individual was on bail, probation or parole at the time of the offense or has a history of violation of release conditions; whether a sentence of imprisonment was imposed and served; and whether the individual remained free of criminal involvement for specified periods of time between offenses.

The report seeks to re-emphasize the importance of complete and accurate criminal history records to the criminal justice practitioners who use and contribute to the nation's State and Federal criminal record databases, as well as to the policymakers who conceive and enact laws such as those compiled here that depend for effective implementation upon the ready availability of accurate and complete criminal history records.

Studies and surveys have suggested that as many as two-thirds of the persons arrested for criminal offenses have prior criminal records, often including offenses in more than one State or jurisdiction. For example, Federal Bureau of Investigation (FBI) officials estimate that of all Federal and State arrest fingerprint cards processed by its Identification Division (which includes submissions for most of the arrests in the country for serious offenses), two-thirds of the arrest subjects are determined to have prior arrests. Further, of the criminal subjects in the FBI's automated files of State and Federal offenders, an estimated 25 to 30 percent are multi-state offenders; that is, they have arrests in more than one State or have both Federal and State arrests.² As the analysis set out in subsequent sections of this report demonstrates, prior criminal involvement should influence the manner in which individuals are processed through the criminal justice system, with regard to such matters as eligibility for bail, probation or parole, prosecution and sentencing as repeat or habitual offenders, and eligibility for particular correctional programs or incarceration in minimum or maximum security facilities. Clearly, if accurate and current information about an offender's prior criminal record is not available in a timely manner, the effective enforcement of many of the laws catalogued in this report is seriously compromised.

¹The tables and narrative also refer to state constitutional provisions and court rules. In the narrative, these provisions are included in the terms "statutes," "laws" or "legal provisions."

² Estimates provided by Mr. William H. Garvie, Section Chief, Automated Fingerprint Processing Section, Identification Division, Federal Bureau of Investigation. See Part VI for a description of Federal and State criminal record databases.

Structure and Content

In Part I, the report lists and discusses Federal and State legal provisions that expressly require or permit consideration of an arrested person's prior criminal record in deciding whether and under what conditions to release the person on bail. The provisions are listed in Table 2.

Part II discusses statutes that expressly require or authorize courts and, in some cases, prosecutors, to consider a defendant's prior criminal record in charging or sentencing the person. The types of sentencing statutes listed and analyzed include those providing for criminal charges to be upgraded based upon prior offenses (Table 3); those providing for enhanced sentences for persons with prior convictions (Table 4); and those providing for the sentencing of persons as career or habitual offenders (Table 5). Part II also sets out and discusses laws that require or authorize consideration of a defendant's prior criminal record in making probation decisions (Table 6) and laws and court rules that require or authorize the preparation of presentence reports that must or may contain information about the subject's prior criminal record (Table 7).

Part III lists and analyzes statutes that expressly require or authorize correctional officials to consider an inmate's prior criminal record when making classification decisions concerning such things as security and institutional program assignment (Table 8).

Part IV lists and analyzes statutes that expressly require or authorize parole boards to consider an inmate's prior criminal record in determinations regarding release on parole or that prohibit or limit parole eligibility because of prior convictions (Table 9).

In Part V, the report lists and discusses Federal and State laws that make ownership or possession of a firearm, or other deadly weapon, by a person who has previously been convicted of a felony, a criminal offense (Table 10).

Part VI briefly describes the State and Federal criminal history databases that are available to criminal justice practitioners who must implement the laws set out in this report, identifies some of the problems that detract from the accuracy and completeness of these databases and briefly summarizes strategies that can improve the quality and ready availability of the records maintained in them.

The citations in the tables refer to the official Federal and State code compilations (listed in the Appendix) where the referenced provisions are set out. The statutes are cited by title and section number or, for a few States, by article or chapter number and section or paragraph number. In a few cases, the citations refer to particular codes within the State's code structure, such as the Penal Code, the Code of Criminal Procedure or the Executive Code. These are indicated by appropriate abbreviations. The citations should enable readers to easily locate the statutes described.

Fifty-four jurisdictions are examined in this report: fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands and the United States government. The study methodology included a survey of criminal justice officials throughout the country and extensive library research that was concluded in October 1990. Every effort has been made to ensure that the tables are accurate and complete. Given the breadth of the subject matter and the sheer volume of statutory provisions encompassed, however, it is possible that some information, particularly with respect to provisions dealing with nonserious offenses, may be missing from some of the tables. The tables do not reflect statutory enactments or amendments occurring after October 1990. Except where material is enclosed in quotation marks, the statute descriptions set out in the tables and in the narrative are summaries or paraphrases of the statutory language. These summaries and paraphrasings are those of the author of the report and should not be attributed to the Bureau of Justice Statistics or the U.S. Department of Justice.

Table 1
Summary of statutes requiring the use of criminal history record information
by jurisdiction and category

(“X” indicates that the jurisdiction has one or more statutory provisions of the category indicated.)

Jurisdiction	Firearms	Bail	Offense upgrade	Sentence enhancement	Habitual criminals	Probation	Presentence reports	Correctional classification	Parole
United States	X	X		X	X	X	X		
Alabama	X	X	X	X	X	X	X	X	X
Alaska	X	X	X	X	X	X	X	X	X
Arizona	X	X	X	X	X	X	X	X	X
Arkansas	X	X		X	X	X	X	X	X
California	X	X	X	X	X	X	X	X	X
Colorado	X	X	X	X	X	X	X		X
Connecticut	X	X	X	X	X		X		
Delaware	X	X	X	X	X		X		
District of Columbia	X	X		X	X		X		
Florida	X	X		X	X	X	X	X	X
Georgia		X	X	X	X	X	X	X	X
Hawaii	X	X		X	X	X	X	X	X
Idaho			X	X	X	X	X	X	X
Illinois	X	X	X	X	X	X	X	X	X
Indiana		X	X	X	X	X	X	X	X
Iowa	X	X	X	X	X	X	X	X	X
Kansas	X	X	X	X	X	X	X		X
Kentucky	X	X	X	X	X	X	X		X
Louisiana	X	X		X	X	X	X	X	X
Maine	X	X	X	X	X		X		
Maryland	X	X		X	X	X		X	X
Massachusetts		X		X	X	X	X	X	X
Michigan		X	X	X	X	X		X	X
Minnesota	X	X			X		X		X
Mississippi	X	X	X	X	X	X	X	X	X
Missouri	X	X	X	X	X	X	X	X	X
Montana	X	X		X	X	X	X		X
Nebraska	X	X		X	X	X	X	X	X
Nevada	X	X	X	X	X	X	X	X	X
New Hampshire	X		X	X	X				
New Jersey	X	X		X	X	X	X	X	X
New Mexico	X	X	X	X	X				X
New York	X	X		X	X	X	X	X	X
North Carolina	X	X	X	X	X	X	X		X
North Dakota	X	X	X	X	X	X	X		X
Ohio	X	X	X	X	X	X	X	X	X
Oklahoma	X		X	X	X		X		X
Oregon	X	X	X	X	X				X

Table 1 (cont.)
Summary of statutes requiring the use of criminal history record information
by jurisdiction and category

("X" indicates that the jurisdiction has one or more statutory provisions of the category indicated.)

Jurisdiction	Firearms	Bail	Offense upgrade	Sentence enhancement	Habitual criminals	Probation	Presentence reports	Correctional classification	Parole
Pennsylvania	X	X	X	X	X	X	X		X
Puerto Rico		X	X	X	X	X	X		X
Rhode Island	X	X		X	X		X	X	X
South Carolina	X	X	X	X	X	X	X	X	X
South Dakota		X	X	X	X	X	X		X
Tennessee	X	X	X	X	X	X	X		X
Texas	X	X	X	X	X	X	X	X	X
Utah	X	X	X	X	X		X	X	
Vermont		X		X	X	X	X		X
Virgin Islands	X	X		X	X				
Virginia	X	X	X	X	X	X	X		X
Washington	X	X	X	X	X	X	X	X	X
West Virginia	X	X	X	X	X	X	X	X	X
Wisconsin	X	X	X	X	X			X	X
Wyoming	X	X	X	X	X	X	X	X	X

Part I: Bail Decisions

As Table 2 illustrates, all but three of the 54 jurisdictions (Idaho, New Hampshire and Oklahoma) have statutes, constitutional provisions or court rules explicitly requiring or permitting the consideration of an arrested person's prior criminal record in deciding whether, and under what conditions, to release the person on bail pending trial or appeal. It is probable that a prior criminal record may properly be considered in making bail decisions even in these three States, but no express legal mandate referring to the use of prior criminal records is found in their laws.

Most of the State laws and constitutional provisions listed in Table 2 provide that arrested persons charged with noncapital offenses (with designated exceptions in some States) shall be admitted to bail if a judicial officer determines that the persons will appear for trial or as otherwise directed. In deciding whether to require money bond or impose release conditions to assure such appearance, the judicial official is required or permitted to take into consideration, among other factors, the existence and nature of a prior criminal record. In many jurisdictions, the court is also permitted to consider whether the individual will pose a danger to the community or will engage in further criminal conduct if released and is permitted or required to consider the individual's prior criminal record, if any, in making that determination.³

For example, the Federal bail provision cited in Table 2 authorizes Federal judicial officers to consider an arrested person's prior criminal record in deciding whether the person will appear for trial if released or will pose a danger to any person or to the community. If the judicial officer determines that the person may not appear if released unconditionally or may pose a danger to the community, the officer may impose designated release conditions, including the requirement of a second bail bond. If the officer determines that no release condition or combination of release conditions will assure the person's appearance and protect against danger to the community, he may order the person detained pending trial. In such determinations, rebuttable presumption of danger to the community exists if the person has been convicted of a designated serious Federal or State offense committed while on pre-trial release within the past five years.

Hawaii law similarly permits consideration of danger to the community and establishes a rebuttable presumption of danger if the person has been convicted of a violent offense within the preceding 10 years. Laws in Illinois, South Carolina and the District of Columbia, among others, also permit consideration of danger to the community as well as the likelihood of appearance and permit judicial officials to consider prior convictions in making those determinations. In all of these states and the others listed in Table 2, judicial officials need early

access to arrested persons' prior records and need to know the nature of prior offenses in order to make informed release decisions as envisioned by the statutes.

In addition, many States have statutory or constitutional provisions denying bail to certain persons with prior convictions or with a history of failure to appear or violation of release conditions. For example, Massachusetts law permits the denial of bail if the person was on bail or under some other form of supervision when arrested. Maryland law permits denial of bail for persons charged with designated offenses if they were on bail when arrested or if they have previously been convicted of certain designated offenses. In New Jersey, bail can be denied if the person was on probation or under a suspended sentence when arrested. A constitutional provision in Texas requires denial of bail if a person is arrested for a felony while on bail, is arrested for a felony involving the use of a deadly weapon and has a prior felony record, or is arrested for any offense and has two or more prior felony convictions. Wisconsin's constitution permits denial of bail for persons arrested for violent crimes if they have prior convictions for violent crimes. Michigan's constitution prohibits release on bail of persons with two or more convictions for violent felonies within the previous 15 years.

³ See *Public Danger as a Factor in Pretrial Release, Digest of State Laws*, April 1985, available from the National Institute of Justice, U.S. Department of Justice, Washington, D.C. 20531.

Finally, New York law prohibits release on bail of persons charged with felonies who have two or more previous felony convictions. The law additionally provides that, except in cases of emergency or when the court finds it to be unnecessary and states the reasons for the record, no person charged with a felony may be released on bail unless the court has been furnished with a criminal history record by the State repository or by a police department. By practice, these criminal history records are required to be fingerprint-based to ensure positive identification and to avoid name search problems caused by the use of aliases. In order to provide criminal record responses in time for the records to be available for initial court appearances, New York's State repository, the Division of Criminal Justice Services in Albany, receives facsimile fingerprints transmitted by microwave or telecommunication lines from police departments in New York City and other large metropolitan areas and population centers in the state. The repository returns search results within a few hours via the State's automated law enforcement telecommunications system.

Few, if any, other states have procedures and facilities for making fingerprint-verified criminal record responses available in time for use in initial bail determinations, which commonly occur within 24 hours after arrest. The District of Columbia has a bail agency charged with the responsibility of obtaining and providing information, including criminal history record information, for use in bail determinations. Other jurisdictions use parole or probation agencies for obtaining and providing

such information. In some cases, these agencies may have the staff and facilities for making inquiries to obtain complete and accurate information concerning prior criminal records. In most cases, however, the only information available in time for initial bail determinations is a criminal record transcript received in response to a name search of the State's automated criminal history system, if there is one, and whatever information is provided by the police or is known to the court. Since name searches are not fully reliable and existing criminal record files may be inaccurate and incomplete, particularly with respect to disposition information, applying the bail laws of a State may be very difficult, particularly in those States where statutes or constitutional provisions deny or restrict the availability of bail for persons with designated prior convictions.

Table 2**Statutes* requiring or permitting prior criminal records to be considered in bail decisions**

(Note: States which do not have statutes requiring or permitting prior criminal records to be considered in bail decisions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
United States (Federal)	18 USC § 3142(e)(1); (f)1; (g)(3)(A)	Bail considerations may include criminal history and record of appearance; rebuttable presumption of denial of bail if previously convicted of crime of violence or enumerated serious offenses or combination of offenses.
Alabama	Rules Judic. Admin., R. 2 Rules Crim. Proc., R. 7.2	Bail factors shall include evidence of prior convictions. Courts may impose conditions of release to secure appearance or to protect the public based upon, among other things, defendant's prior criminal record.
Alaska	12.30.020(c)(8)	Factors affecting conditions of release shall include the person's record of convictions and record of appearance.
Arizona	13-3967(C)	Factors affecting method of release or amount of bail shall include person's record of arrests and convictions and appearance at court proceedings.
	Const., art. II, § 22	Provides for denial of bail for felony offenses committed while on bail for a prior felony offense.
Arkansas	Rule Crim. Proc., R. 9.2	Factors affecting amount of bail shall include person's prior criminal record and history of response to legal process.
California	Pen. Code § 1275	Bail factors shall include defendant's previous criminal record.
Colorado	16-4-101 et seq.	Factors affecting bail amount or denial of bail on grounds of public danger shall include defendant's prior criminal record and record of appearance.
	Const. art. 2, §§ 19, 20	Authorizes denial of bail on grounds of dangerousness for persons charged with crimes of violence committed while on release, parole or probation or who have specified prior felony convictions.
Connecticut	54-63b	Release criteria shall include defendant's prior criminal record and record of appearance. Bail commissioner's report shall include defendant's prior criminal record.
Delaware	11-2105(b)	Bail factors shall include defendant's prior criminal record and record of appearance.
District of Columbia	23-1303	Bail agency report to judicial officer shall include defendant's prior criminal record.
	23-1321(b)	Judicial bail determinations regarding imposition of release conditions shall be based upon, among other things, defendant's record of convictions and record of appearance.
	23-1322	Authorizes pretrial detention to protect public based upon, among other things, defendant's prior criminal history.
Florida	903.046(2)(d)	Bail factors shall include defendant's record of convictions and record of appearance. Prior record of failure to appear renders defendant ineligible for some types of bond.
	907.041	Authorizes pretrial detention to protect public, based upon, among other factors, specified previous convictions, previous violations of release, or commission of a dangerous crime while on probation, parole or release.
Georgia	17-6-1	Prohibits bail, except upon order of Superior Court, of persons charged with enumerated serious felonies who have previously been convicted of such a felony or who committed the new offense while on probation, parole or bail for such a felony.

*Including constitutional provisions or court rules.

Table 2 (cont.)
Statutes* requiring or permitting prior criminal records to be considered in bail decisions
(Note: States which do not have statutes requiring or permitting prior criminal records to be considered in bail decisions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Hawaii	804.3	Rebuttable presumption of danger to community (and denial of bail) if defendant has been convicted of a crime of violence during previous 10 years, or if defendant was on bail, probation or parole for a violent felony charge at time of arrest.
Illinois	38-110-5(a)	Bail factors shall include defendant's record of convictions and delinquency adjudications, and whether defendant is already on bail or under supervision.
Indiana	35-33-8-4	Factors relevant to release on bail (and bail amount) shall include defendant's criminal or juvenile record and record of non-appearance.
Iowa	811.2	Bail considerations shall include defendant's record of convictions and record of appearance or flight.
Kansas	22-2802(4)	Pretrial bail considerations shall include defendant's record of convictions and appearance or non-appearance or flight, and whether defendant is on parole.
Kentucky	431.525	Amount of bail shall be considerate of the past criminal acts of the defendant.
Louisiana	Code Crim. Proc., art. 317	Factors in determining amount of bail shall include the defendant's previous criminal record.
	Art. 317.1	Magistrate setting bail may apply to juvenile court for defendant's juvenile abstract.
Maine	15-1026.4	Pretrial bailsetting official shall consider defendant's criminal record and record of appearance and whether defendant is on probation or parole or other supervision.
	15-1051.2	Same factors shall be considered in post-conviction bail determinations.
Maryland	Art. 27, § 616 1/2(c)	Rebuttable presumption of bail denial for person charged with enumerated serious offenses committed while on bail for prior enumerated serious offenses.
	Art. 27, § 616 1/2(d)	No personal recognizance for person charged with enumerated serious offenses if previously convicted of such an offense.
Massachusetts	276-58	Bail factors shall include defendant's record of convictions and record of failure to appear or flight, and whether defendant already is on bail, parole, probation or other form of supervision.
Michigan	Const., art. 1, § 15	Permits denial of bail for persons charged with violent felonies if convicted of two or more violent felonies within previous 15 years, and persons charged with violent felonies while on bail, probation or parole for previous violent felony.
	765.6	Amount of bail shall reflect the defendant's previous criminal record.
	Const., art. 1 § 15	Bail may be denied for person charged with a violent felony who has been convicted of two violent felonies within previous 15 years or who was already on bail, parole or probation in connection with a violent felony charge or conviction.
Minnesota	Rules Crim. Proc., R. 6.02(2)	Release condition factors shall include defendant's record of convictions and record of appearance or flight.
Mississippi	99-3-18	Release factors concerning a person arrested for a misdemeanor shall include prior arrest record.

*Including constitutional provisions or court rules.

Table 2 (cont.)**Statutes* requiring or permitting prior criminal records to be considered in bail decisions**
(Note: States which do not have statutes requiring or permitting prior criminal records to be considered in bail decisions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Missouri	544.455.2	Release condition factors shall include defendant's record of convictions and record of appearance or flight.
Montana	46-9-301(7)	Amount of bail shall be considerate of defendant's prior criminal record.
Nebraska	29-901.01	Release condition factors shall include defendant's record of convictions and record of appearance or flight.
Nevada	178.4853(5)	Release condition factors shall include defendant's prior criminal record and record of appearance or non-appearance.
	178.498	Amount of bail shall reflect factors above.
New Jersey	2C:45-3	Bail may be denied if person commits crime while on probation or suspended sentence.
New Mexico	31-21-9B	Pre-release report shall include information about defendant's record of convictions and record of appearance or non-appearance.
	Rules Crim. Proc., R. 5-401B	Release condition factors shall include defendant's record of convictions and record of appearance or flight.
	Const., art. 1, § 13	Bail may be denied for 60 days for a person charged with a felony who has previously been convicted of two or more felonies or a person charged with a felony with a deadly weapon who has a prior felony conviction.
New York	Cr. Proc. Law § 530.20(2)(b), 530.30(2), 530.40(4)	No order of recognizance or bail on felony charges if defendant has two previous felony convictions. No recognizance or bail until court reviews a criminal history record transcript furnished by state repository or police department, except in cases of emergency or when court finds it to be unnecessary and states reasons for record.
	Cr. Proc. Law § 510.30	Provides that in imposing release conditions, courts may consider the defendant's prior criminal record and prior record of appearance or flight.
North Carolina	15A-534(c)	Release condition factors shall include defendant's record of convictions and record of failure to appear or flight.
North Dakota	R. Cr. Proc. 46(a)(1)(ii)	Release condition factors shall include defendant's record of convictions and record of failure to appear or flight.
Ohio	2919.251	Bail in domestic violence cases may be denied if defendant has prior conviction for domestic violence offenses.
	2937.23	Bail amount shall be fixed with consideration of defendant's previous criminal record.
	Rules Crim. Procedure, R. 46(F)	Pretrial release factors shall include defendant's record of convictions and record of appearance or flight.
Oregon	135.230(6)(f)	Pretrial release criteria shall include defendant's prior criminal record and record of appearance.
Pennsylvania	R. Crim. Proc., R. 4004	Pretrial bail criteria shall include defendant's record of relevant convictions and record of appearance.
	R. 4010.A	Same factors shall govern bail after conviction in noncapital cases.
	R. 4010.B	Same factors shall govern bail after sentencing in noncapital cases.
Puerto Rico	R. Crim. Proc., R. 218	Amount of bail shall reflect defendant's record of previous appearances and compliance with court orders.

*Including constitutional provisions or court rules.

Table 2 (cont.)**Statutes* requiring or permitting prior criminal records to be considered in bail decisions**

(Note: States which do not have statutes requiring or permitting prior criminal records to be considered in bail decisions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Rhode Island	Const., art. 1 § 9	Bail prohibited for persons charged with dangerous weapons offenses or offenses punishable by life imprisonment if previously convicted of any such offenses or of drug offense punishable by 10 years or more.
South Carolina	17-15-30	Release condition criteria shall include defendant's record of convictions and record of flight or failure to appear.
South Dakota	23A-43-4	Release condition factors shall include defendant's record of convictions and record of appearance or non-appearance or flight.
Tennessee	40-11-115(b)(5)	Release factors shall include defendant's prior criminal record and prior releases on recognizance or bail.
Texas	Const., art. 1 § 11a	Bail may be denied for noncapital felony offenders who have been convicted of two prior felonies, who committed the felony offenses while on bail for a felony indictment or who used a deadly weapon in the commission of the felony offense after a prior felony conviction.
Utah	77-20-1	Bail may be denied for persons charged with felonies while on bail, parole or probation.
Vermont	13-7554(b)	Release condition factors shall include the defendant's record of convictions and record of appearance or flight.
Virgin Islands	5-3504a	Bail may be denied based upon, among other factors, defendant's record of convictions and record of appearance or flight.
Virginia	19.2-121	Factors relevant to release on unsecured bond or recognizance shall include the defendant's record of convictions and record of appearance, non-appearance or flight.
Washington	Crim. Rules, R. 3.2	Release condition factors shall include defendant's criminal record, and history of response to legal process.
West Virginia	62-1c-3	Factors affecting amount of bail shall include the defendant's previous criminal record.
Wisconsin	969.01(4)	Release condition factors shall include the defendant's prior criminal record, whether defendant is on probation, parole or bail and whether defendant has previously forfeited bail.
	Const., art. 1, § 8	Authorizes denial of bail for up to 10 days (and another 60 days after hearing) for a person accused of a violent felony who has a previous conviction for a violent felony.
Wyoming	7-10-102; R. Crim. Proc. R. 8(c)(2)	Release condition factors shall include defendant's record of convictions and record of appearance, non-appearance or flight.

*Including constitutional provisions or court rules.

Part II: Sentencing

Tables 3 through 6 list statutory provisions and other legal provisions in the 54 jurisdictions that mandate or permit consideration of a convicted person's previous criminal record in deciding on an appropriate sentence. All of the jurisdictions have one or more laws of this type; most have laws in every category shown in the tables, and some have several provisions within each category. The laws listed include those that require second and subsequent offenses to be upgraded to a higher degree of seriousness (for example, from a misdemeanor to a felony or to a higher class of misdemeanor or felony) (Table 3); those that require or permit enhanced sentences for persons with previous convictions, including States with sentencing guidelines that factor prior convictions into the sentencing approach (Table 4); those that require or permit persons with serious past records to be sentenced to enhanced terms of imprisonment as habitual criminals or career criminals (Table 5); and those that require or permit consideration of past criminal activity in deciding whether to suspend a sentence and place the offender on probation (Table 6). Finally, Table 7 lists statutory provisions and court rules that require or permit the preparation of presentence reports that must or may include references to prior criminal histories. As in all of the tables in the report, only those statutory provisions are included that expressly refer to prior criminal activity. For example, although it may be assumed that judges in virtually all states have

the authority to order the preparation of presentence reports and that such reports would include information about past criminal involvement, Table 7 lists only those statutory provisions that expressly require or permit the preparation of reports and the inclusion of information about past criminal conduct.

Upgraded Charges

Table 3 lists provisions in state codes that upgrade second and subsequent offenses to higher classes of offenses than first offenses. Provisions are included in this table only if they expressly refer to the degree or class of upgraded offense — that is, from a misdemeanor to a felony or from one level or class of misdemeanor or felony to a higher level or class. In such cases, it is assumed that the upgraded offense will be specified in the charging document. Thus, to comply with the laws, information concerning prior convictions, if any, must be available to the prosecutor at the time the case is filed in court because the class of offense charged may affect the type of charging document utilized or the court in which the case is filed.

Most of the provisions listed in Table 3 relate to second and subsequent instances of the same offense. For example, in Arizona, the first offense of spousal sexual assault is a class 6 felony (and may in some cases be reduced to a class 1 misdemeanor with mandatory counseling); but any subsequent offense is a class 2 felony, and the offender is not eligible for probation, parole, pardon, or work furlough. Numerous other States have similar upgrade provisions relating to sexual or drug offenses, theft, larceny, prostitution, and reckless driving or driving under the influence of drugs or alcohol.

In some States, however, a particular offense may be upgraded if the offender has prior convictions for the same offense or for other types of offenses. For example, in Indiana, specified handgun violations are treated as class A misdemeanors for first offenses, but the offense is upgraded to a class D felony if the offender has a prior handgun violation conviction or any felony conviction within the previous 15 years. Illinois law treats petty theft as a misdemeanor for a first offender, but if the person has previously been convicted of any type of theft, robbery, armed robbery or burglary, the offense is upgraded to a class 4 felony. The Illinois law specifically requires that the prior conviction must be stated in the information or indictment so as to give notice of the intention to treat the charge as a felony. California has a similar law that upgrades petty theft to a felony if the offender has a prior conviction for theft, robbery or burglary. Maine law classifies first offenses of theft, forgery or negotiating a worthless instrument as class D crimes, but upgrades the offenses to class C crimes if the offender has two or more prior convictions for theft, forgery, fraud, worthless instruments, robbery or burglary.

Enhanced Sentences

Table 4 lists State and Federal statutory provisions that require or permit the imposition of enhanced sentences if the offender has prior convictions. That is, these statutes provide for stricter sentences for particular offenses rather than upgrading the offense to a more serious charge. In some cases, the prior convictions must be for the same offense, but in many cases enhanced sentences can be based upon any prior conviction.

Kansas, for example, has a repeat felony offender law that provides that a person convicted for a second time of any felony offense may be sentenced to up to twice the normal maximum sentence, and a person convicted of a felony for a third or subsequent time may be sentenced to up to three times the normal maximum sentence. Wisconsin's repeat offender law provides for enhanced penalties of up to 10 additional years for persons with prior felony convictions or three misdemeanor convictions within the previous five years. California law provides that any person convicted of a serious felony who has previously been convicted of a serious felony in California or any other jurisdiction shall receive a mandatory five-year enhancement for each such prior conviction, and in some cases may be given additional enhancements of up to three years for each prior prison term served in California or elsewhere. New Mexico law provides for enhanced sentences for felony offenders of one additional year for a single prior felony conviction, four additional years for two prior felony

convictions and eight additional years for three or more prior felony convictions. In addition to these examples, many other States have repeat or persistent felony offender laws that provide for enhanced sentences for felony offenders with prior felony convictions. Some of these laws provide for more serious enhancements for repeat violent offenders or repeat offenders who use dangerous weapons.

Other provisions, as noted above, authorize specified enhanced sentences for second or subsequent convictions for the same offense. For example, Wyoming law provides for specified enhanced sentences for second or subsequent convictions of sexual assault or abandoning or endangering children. In Wisconsin, the penalty for domestic abuse offenses may be increased by up to two years if the offender has previously been arrested for a domestic abuse incident. In California, persons convicted of specified sexual offenses receive mandatory five-year enhancements for each prior conviction for any such sexual offense unless the offense occurred prior to a ten-year period during which the person was not in prison custody and did not have a felony conviction. Numerous States, including Alaska, Colorado, Connecticut, Idaho, Kentucky, New Hampshire, South Carolina and Washington, have provisions in their controlled substances acts that provide for specified enhanced penalties for drug offenses if the offender has prior drug offense convictions or, in some cases, provide for leniency for certain violations if the offender has no previous drug offense convictions. Finally, several States, including Alaska, Delaware, Michigan and New Mexico, have laws providing for specified enhanced penalties for driving under the influence (DUI) offenders with prior DUI convictions.

Many jurisdictions have statutory provisions that do not specify particular enhanced terms for prior convictions, but instead permit the court to consider prior convictions as aggravating circumstances in imposing sentences. For example, numerous States, including California, Florida, Idaho, Kentucky, Massachusetts, Montana, New Mexico and Vermont, permit courts dealing with capital offense cases to consider previous murder convictions as aggravating circumstances authorizing the imposition of the death penalty or sentences of life imprisonment without parole. Other States have established sentencing guidelines that take prior convictions into consideration in setting sentence ranges for particular offenses or that permit judges to sentence above the recommended ranges for persons with specified prior convictions. For example, the Federal Sentencing Guidelines establish presumptive sentence ranges for Federal crimes based upon offense level (seriousness of the crime) and prior criminal history. Sentence ranges are enhanced for all except minor offenses based upon the number, nature and recency of prior offenses and whether the offender was under any form of criminal justice custody or supervision at the time of the new offense. In addition, sentencing judges are permitted to depart from the computed guideline range if, among other things, the criminal history category determined on the

above basis does not adequately reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes.⁴ Other jurisdictions — including Alaska, Delaware, Florida, Illinois, Minnesota, Oregon, Pennsylvania, Tennessee, Washington and Wisconsin — have established sentencing guidelines, or presumptive or determinate sentencing structures, that are based in part on prior convictions as aggravating factors, or on a sentence computation formula that includes prior convictions as a factor. Sentencing commissions are currently developing guidelines in Hawaii, Kansas, Louisiana, New Mexico and South Carolina.

Habitual Offenders

In addition to the above cited statutes authorizing or requiring the imposition of enhanced sentences for prior convictions in some cases, all of the 54 jurisdictions have statutory provisions authorizing certain persistent offenders to be classified as habitual offenders, career offenders, multiple offenders, professional offenders or some similar designation and sentenced to significantly enhanced presumptive or mandatory terms of imprisonment (Table 5). Many of the laws also provide that such offenders may not be paroled or must serve substantially increased portions of their sentences before becoming eligible for parole. For example, California's habitual offender law applies to any person convicted of a violent felony who has served two or more prior prison terms for enumerated serious offenses.

Persons who have served two prior prison terms receive a mandatory life term with no parole sooner than 20 years. Those who have served three or more prior prison terms receive a mandatory life term without the possibility of parole. Prior prison terms are not counted for purposes of the statute if the person remained free of criminal involvement for a period of 10 years after release from supervision. As in the case of the California enhancement statutes cited earlier, the California habitual offender law requires that any prior conviction or prison term used for enhancement purposes must be alleged in the accusatory pleading and either admitted by the defendant or proved in court.

Delaware's habitual criminal statute applies to persons convicted for the third time of enumerated serious felonies or for the fourth time of any felony offense. Habitual, serious felony offenders who are not sentenced to death receive mandatory life sentences without the possibility of parole. Habitual, non-serious felony offenders may be sentenced to enhanced terms up to life imprisonment. Florida's law permits the imposition of enhanced penalties (up to life without parole) for habitual felony offenders and habitual violent felony offenders. The law also provides that criminal justice agencies in the state shall employ enhanced law enforcement efforts in the investigation, apprehension and prosecution of career criminals, including coordination with other local, State and Federal agencies and the assignment of highly qualified investigators and prosecutors. Hawaii's habitual criminal law has a similar provision requiring enhanced law enforcement efforts.

Georgia's law provides that a person convicted for the fourth time of a felony must be sentenced to the maximum term for the new offense and may not be paroled. Illinois law provides that any person convicted of first degree murder, criminal sexual assault or any class X felony (enumerated serious felonies) after two or more prior convictions for any of these offenses in Illinois or elsewhere, shall be adjudged a habitual criminal and receive a mandatory life sentence if the death penalty is not imposed. Under Indiana's law, felony offenders with two or more prior felony convictions can be sentenced to eight to 30 additional years depending upon the seriousness of the new and prior offenses.

South Carolina's habitual offender statute provides that a person convicted for the third time of a violent crime shall be sentenced to life imprisonment without parole. Idaho's persistent offender statute provides for prison terms of five years to life for persons convicted for the third or subsequent time of a felony in the state or in any other jurisdiction. Tennessee's law provides for enhanced sentences for multiple, persistent and career offenders and provides that the district attorney must file a statement of intent to seek an enhanced sentence 10 days before trial or entry of a guilty plea unless waived by the defendant with the court's consent. Both Indiana and New Mexico have similar provisions requiring the prosecutor to allege habitual offender status in the charging instrument. South Dakota's habitual offender law requires the State's attorney to file a separate information alleging habitual offender status at the time of arraignment and provides that any jailer, warden, or probation, parole, prison or law enforcement officer who has knowledge that a person charged

⁴ See Table 4 and *West's Federal Sentencing Guidelines Manual*, 1990 Edition, pp. 221, 229, 236.

with a felony has previously been convicted shall have a duty to report the information to the State's attorney. West Virginia's law provides that if a prisoner is received by the State penitentiary and the warden has knowledge that the person has previously been convicted of a felony in any court and has not been sentenced as a repeat or habitual offender, the warden shall notify the court and the court shall direct that an appropriate information be filed.

Finally, the career offender provision in the Federal Sentencing Guidelines provides for enhanced sentences up to life without parole for persons charged with crimes of violence or controlled substance offenses who have two or more prior convictions for any such offenses under State or Federal law. The Guidelines also provide for enhanced sentences for "criminal livelihood," that is, for persons who repeatedly commit crimes as part of a pattern of criminal conduct engaged in as a livelihood.

It is apparent from the examples described that proper enforcement of Federal and State habitual criminal laws, as well as the other sentencing statutes cited and described in previous sections of the report, requires that courts and, in many cases, prosecutors, have knowledge of offenders' past criminal involvement. This means that they must have information concerning not only the number, nature and dates of previous convictions, but also in some cases must know whether the offender has served previous prison terms, whether the offender was on bail or under some other form of supervision at the time of arrest for the new or prior offenses, and whether the new and

prior incidents of criminal involvement were separated by periods during which the individual was free of criminal involvement. As in the case of the statutes cited in earlier parts of this report, virtually all of the habitual criminal laws, enhanced sentencing laws and offense-upgrade laws cited in this part take into account offenses committed in any State or Federal court and, in some cases, in territorial or foreign courts as well.

Probation Eligibility

Table 6 lists laws that require or permit the consideration of an offender's prior criminal history in deciding whether to place the offender on probation. As noted previously, virtually all of the habitual offender laws listed in Table 5 and many of the repeat offender and sentence enhancement laws listed in Table 4 provide for mandatory prison terms, foreclosing probation as a possible sentence. In addition, probation is commonly prohibited for persons convicted of enumerated serious offenses, such as murder or other offenses involving violence. Where probation is not prohibited, however, courts generally have the option of ordering an offender placed on probation. Although it may be assumed that, even in the absence of statutory authority, a prior criminal history record would be a proper consideration in probation decisions, many States have enacted laws expressly requiring or authorizing such consideration.

West Virginia law, for example, provides that no person convicted of a felony shall be sentenced to probation unless the court shall have received and considered a presentence report which "shall include information concerning the offender's court and criminal record." Georgia law provides that, unless probation is prohibited under other provisions of law, a court may place an offender on probation if, among other things, the offender is deemed not likely to engage in further criminal conduct. Before making this decision, the court is required to request a probation supervisor to file a report which must include information concerning the offender's prior criminal record, if any. South Carolina law provides that if the services of a probation officer are available, no offender may be placed on probation unless the court receives and considers a report that must include information about the offender's previous criminal record. South Dakota law provides that a presentence report, with information about any prior offenses, must be compiled and considered prior to ordering probation unless the defendant waives the requirement or the court finds it to be unnecessary and so states in the record.

In Illinois, courts are required to impose a sentence of probation or conditional discharge unless the offense carries a mandatory prison term or, "having regard to the nature and circumstances of the offense and the history, character and condition of the offender," the court decides that imprisonment is necessary to protect the public or to avoid deprecating the seriousness of the offense. Nebraska has a similar provision that establishes probation as a presumptive sentence for offenses that do not carry mandatory prison terms, unless imprisonment is necessary to protect the public from the risk of further criminal conduct. The law further provides that a factor in favor of probation shall be that the offender has no history of juvenile or criminal conduct and has led a law-abiding life for a substantial period before the instant offense. Hawaii and Ohio also have statutory provisions authorizing courts to consider the absence of prior criminal activity as a factor favoring probation. Kansas law provides that probation shall be the presumptive sentence for persons convicted of felonies of the least serious class who have no previous criminal records.

In addition to these statutes making an offender's prior criminal record a mandatory or discretionary factor in probation determinations, numerous States have provisions denying or limiting probation eligibility for persons with specified prior convictions. For example, a Colorado law provides that probation may not be ordered for any offender with two or more prior felony convictions or an offender with one or more prior felonies who is convicted of a class 1, 2 or 3 felony.

Mississippi law prohibits probation for any convicted offender who has a prior felony conviction. North Carolina law prohibits probation for persons convicted for the second or subsequent time of offenses involving deadly weapons. Georgia law prohibits probation for persons convicted for the second or subsequent time of burglary or armed robbery or convicted for the third or subsequent time of sexual offenses against children. California law prohibits probation for persons who have two or more prior felony convictions in California or elsewhere, "except in unusual cases where the interests of justice would be best served if the person is granted probation."

Presentence Reports

As Table 7 shows, almost all of the jurisdictions have statutes or court rules that require or authorize sentencing judges to order the preparation of presentence reports to guide the sentencing decision. Virtually all of these provisions require the presentence report to include information about the offender's prior criminal history.

Some of the statutes require the preparation of presentence reports in all cases, including felonies and misdemeanors. For example, the Federal statutes cited in Table 7, in combination with the cited provisions of the Federal Rules of Criminal Procedure, require courts to order a probation officer to conduct a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is information in the record sufficient to enable the meaningful exercise of sentencing authority. The presentence report is required to include information concerning the nature and circumstances of the offense and the history and characteristics of the offender, including specifically any

prior criminal record. Pennsylvania's law also requires presentence reports prior to sentencing in all cases. The report must include all criminal charges brought in any court against the defendant and the status or disposition of such charges, as well as an indication of whether the defendant is then serving any term of imprisonment or is on probation or parole with reference to any such charges.

More commonly, however, the statutes require the preparation of presentence reports in felony cases and make them discretionary with the court in misdemeanor cases. For example, Florida law provides that prior to the sentencing of a person who has been found guilty or has pleaded guilty or *nolo contendere*, the court shall in a felony case, and may in a misdemeanor case, refer the case to the Department of Corrections for investigation and recommendation. The Department's report is required to set out, among other things, "an explanation of the offender's criminal record, if any, including his version and explanation of any previous offenses." Kansas law makes presentence reports discretionary in misdemeanor cases, but provides that courts must order the preparation of presentence reports in felony cases "unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources." The law provides that presentence reports shall, except for good cause shown, include information concerning, among other things, "the criminal record, social history and present condition of the defendant." The law further requires all governmental agencies to furnish all requested records except where specifically prohibited by law.

Other State statutes leave the matter of presentence reports to the discretion of the courts in all cases. As an example, Delaware's law provides that upon conviction of any person for any crime and before sentencing, the court may, before imposing sentence, direct a probation officer "to thoroughly investigate and report upon the history of the accused and any and all other relevant facts." Such officer is required to investigate, among other things, the "criminal record, social history and behavior pattern" of the offender and to file a report that must include, among other things, "an evaluation of the offender's criminal conduct."

The agencies ordered to prepare presentence reports (under the laws listed in Table 7) generally are permitted time for investigation and compilation of needed information. Thus they are not as constrained as are police officials, court commissioners and others who need to obtain criminal record information as quickly as possible. For example, there generally will be time for agencies preparing presentence reports to obtain a fingerprint-based search of the State's criminal record system, thus avoiding the risk of missing a previous record because the subject gave a fictitious name. There may also be sufficient time to receive a response from the FBI indicating whether the subject has an arrest in another jurisdiction. Finally, there may be sufficient time to contact courts and correctional agencies, if necessary, to obtain missing disposition information or to verify the accuracy of recorded arrest and disposition information.

Table 3

Statutes providing for upgraded charges for offenders with prior convictions

(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Alabama	13A-12-213	Second offense of simple possession of marijuana is class C felony.
Alaska	11.46.130	Theft of property of value of \$50 - \$500 is class C felony if person has been convicted and sentenced for theft or concealment offenses twice within the previous five years.
	11.46.140	Theft of property of value of less than \$50 is a class A misdemeanor if the person has been convicted and sentenced for theft or concealment offenses twice within previous five years.
	11.46.220	Concealment of stolen merchandise by a person who has been convicted and sentenced for the same offense twice within the previous five years is a class C felony if the value of the property is \$50 to \$500, and is a class A misdemeanor if the property is a value under \$50.
	11.46.484	Criminal mischief involving property valued at \$50 - \$500 is a class A misdemeanor, but if the person has been convicted of criminal mischief within the previous seven years, the offense is a class C felony.
	11.71.010	Drug misconduct is an unclassified felony if the criminal offense is a felony and is part of a continuing series of at least five drug violations undertaken with at least five other persons supervised by the offender.
Arizona	13-1406.01	First offense of sexual assault of a spouse is a class 6 felony; subsequent offenses are class 2 felonies.
	13-3410	Serious drug offenders (those who commit serious drug offenses as part of a pattern of at least three related drug violations) shall be sentenced to life imprisonment.
	13-3415	Consideration of whether an object is prohibited drug paraphernalia shall include, among other factors, any prior drug convictions of person owning or controlling the object.
	28-692.01.E	Person convicted of a second driving under the influence of drugs or alcohol (DUI) violation within 60 months is guilty of a class 1 misdemeanor. A third or subsequent violation is a class 5 felony.
California	Pen. Code § 666	Person convicted of petty theft after previous conviction for theft, robbery or burglary shall be sentenced to up to one year in county jail.
	Pen. Code § 313.4	Person convicted of distribution or exhibition of harmful matter to minor is punishable by up to \$2,000 fine or up to one year in jail or both. Subsequent offense is punishable as a felony by imprisonment in state prison.
	Pen. Code § 314	Indecent exposure is punishable by up to one year in jail. Subsequent offense is punishable as a felony and imprisonment in state prison.
Colorado	12-22-127	First offense of violation of provisions relating to druggists and sale of drugs is a class 2 misdemeanor; second or subsequent offense is a class 6 felony.
	18-12-108	First offense of possession of firearm by convicted felon is a class 5 felony. Second or subsequent offense is a class 4 felony.

Table 3 (cont.)
Statutes providing for upgraded charges for offenders with prior convictions
(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Connecticut	53a-40	Provides for sentencing of persons with designated prior convictions as (1) a persistent dangerous felony offender (class A felony), (2) a persistent serious felony offender (next most serious degree of felony), (3) a persistent larceny offender (class D felony) or (4) a persistent felony offender (next most serious degree of felony).
Delaware	Senate Bill No. 58, July 1, 1989, Truth in Sentencing Act	Classifies offenses for sentencing purposes, including some offenses upgraded based on prior convictions.
Georgia	16-5-45	Interference with child custody. First offense is a misdemeanor; second offense is upgraded misdemeanor; third offense is a felony.
	16-8-14	Shoplifting. First offense is a misdemeanor; second offense is an upgraded misdemeanor with mandatory fine; third offense is an upgraded misdemeanor with mandatory jail term; fourth or subsequent offense is a felony.
	16-11-126	Carrying concealed weapon. First offense is a misdemeanor; second or subsequent offense is a felony.
	16-11-128	Carrying a firearm without a license. First offense is a misdemeanor; second or subsequent offense is a felony.
Idaho	18-8005	DUI. First offense is a misdemeanor with possible fine and jail term; second offense within five years is a misdemeanor with mandatory jail term; third or subsequent offense within five years is a felony.
Illinois	23-2355	Child endangerment. First offense is a class A misdemeanor; second or subsequent offense is a class 4 felony.
	38-11-14	Prostitution. First and second offenses are misdemeanors; third and subsequent offenses are felonies.
	38-11-20	Obscenity is a class A misdemeanor; second or subsequent offense is a class 4 felony.
	38-12-15	Criminal sexual abuse is a class A misdemeanor; second or subsequent offense is a class 2 felony.
	38-16-1	Theft of property not exceeding \$300 in value is a class A misdemeanor, but if the offender has previously been convicted of theft, robbery, burglary, possession of burglary tools or home invasion, the offense is a class 4 felony.
	38-24-1	Unlawful use of weapons. First offense for carrying or possessing an unlawful weapon is a class A misdemeanor; a second or subsequent violation is a class 4 felony.
	38-28-3	Keeping a gambling place. First offense is a class C misdemeanor; a second or subsequent offense is a class 4 felony.
	38-33A-3	Commission of a felony with a category II weapon is a class 2 felony; a second or subsequent violation is a class 1 felony.
	38-37-1	Maintaining a public nuisance. First offense is a class A misdemeanor; second or subsequent offense is a class 4 felony.
	56 1/2-1406	Controlled substance offenses. First offenses are class A misdemeanors; second and subsequent offenses are class 4 felonies.

Table 3 (cont.)**Statutes providing for upgraded charges for offenders with prior convictions**

(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Indiana	16-6-8-10	Illegal sale of legal drugs. First offense is a class D felony. Second or subsequent offense is a class C felony.
	35-43-4-2.5	Receiving stolen auto parts. First offense is a class D felony. Second or subsequent offense is a class C felony.
	35-45-4-2	Prostitution is a class A misdemeanor, but becomes a class D felony on the third offense.
	35-43-4-2.3	Buying or selling property with removed or altered serial number is a class A misdemeanor; second or subsequent offense is a class D felony.
	35-43-5-7	Welfare fraud under \$250 is a class A misdemeanor, but is a class D felony if the offender has a prior conviction for welfare fraud.
	35-45-4-3	Patronizing a prostitute is a class A misdemeanor, but is a class D felony upon the third conviction.
	35-47-2-23	Carrying a handgun without a valid license is a class A misdemeanor, but is a class D felony if the offender has a prior conviction for the same offense or any prior felony conviction within the previous 15 years.
	35-48-4-8.1	Manufacturing drug paraphernalia is a class A infraction, but a second or subsequent offense is a class D felony.
	35-48-4-8.2	Dealing in drug paraphernalia is a class A infraction, but a second or subsequent offense is a class D felony.
	35-48-4-8.3	Possession of drug paraphernalia is a class A infraction, but a second or subsequent offense is a class D felony. Reckless possession of drug paraphernalia is a class A misdemeanor, but a second or subsequent offense is a class D felony.
	35-48-4-10	Drug dealing is a class A misdemeanor, but a second or subsequent offense is a class D felony.
	35-48-4-14	Offenses related to fraudulent drug prescriptions are class D felonies, but second or subsequent offenses are class C felonies.
Iowa	714.2	Theft of property not over \$500 in value by one who has twice been convicted of theft is a class D felony.
Kansas	8-262	Driving with suspended or revoked license. First offense is a class B misdemeanor; second offense is a class A misdemeanor; third and subsequent offenses are class E felonies.
	65-4127a	Possession, manufacture or distribution of drugs. First offense is a class C felony; second offense is a class B felony; third or subsequent offense is a class A felony.
Kentucky	189A.090	Driving with revoked or suspended license. First offense is a class B misdemeanor; second offense is a class A misdemeanor; third or subsequent offense is a class D felony.

Table 3 (cont.)
Statutes providing for upgraded charges for offenders with prior convictions
(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Maine	17-A-362	Theft is a class D crime, but if the offender has two prior theft, forgery, fraud, or burglary convictions in Maine within the previous 10 years, the offense is a class C crime.
	17-A-703	Forgery is a class D crime, but if the offender has two prior convictions for theft, fraud, burglary or robbery, the offense is a class C crime.
	17-A-708	Negotiating a worthless instrument is a class D crime, but if the offender has two prior convictions for theft, worthless instruments, burglary or forgery, the offense is a class C crime.
	17-A-1105	A person charged with trafficking or furnishing of scheduled drugs is guilty of aggravated trafficking or furnishing if he has a prior conviction for a felony drug offense; aggravated trafficking or furnishing is a crime one class more serious than simple trafficking or furnishing.
	17-A-2922	Sexual exploitation of a minor is a class B crime, but if the offender has a prior conviction for the same offense, the offense is a class A crime.
	17-2923	Dissemination of sexually explicit materials is a class C crime, but if the offender has a prior conviction for the same offense, the offense is a class B crime.
	29-1312-B	DUI. First convictions are punishable by fines and suspension of license; second and subsequent offenses within six years are punishable by heavy fines and mandatory jail sentences.
Michigan	257.625	DUI. First and second offenses are misdemeanors with escalating fines and jail terms; third or subsequent offenses within 10 year period are punishable as felonies.
	750.131	Bad check offenses escalate from misdemeanors to felonies depending on the amount involved and the number of prior offenses.
	750.451	Prostitution. First offense is a violation; second offense is a misdemeanor; third offense is a felony.
	750.535	Receiving stolen property is a felony if the value of the property exceeds \$100 and a misdemeanor if the value is \$100 or less, but a third or subsequent offense is a felony regardless of the value of the property.
Mississippi	97-23-93	Shoplifting of property of a value of \$250 or less. First and second convictions are misdemeanors with escalating fines and jail terms; third or subsequent offense is a felony.
Missouri	195.275, .285, .291, .292, .295, .296	Drug offenses. Provides for upgraded sentences for prior drug offenders (one previous felony drug offense) and persistent drug offenders (two or more previous felony drug offenses).
	570.040	Theft. Third offense is a class C felony without regard to the value of the property.
	577.012; 577.023	DUI. First offense is a class C misdemeanor; second offense within five years is a class A misdemeanor; third or subsequent offense within 10 years is a class D felony.

Table 3 (cont.)

Statutes providing for upgraded charges for offenders with prior convictions

(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Nevada	201.195	Solicitation of minor. First offense is a gross misdemeanor; second or subsequent offense is a felony.
	201.210	Lewdness. First offense is a gross misdemeanor; second or subsequent offense is a felony.
	201.220	Indecent exposure. First offense is a gross misdemeanor; second or subsequent offense is a felony.
	200.571	Harassment. First offense is a misdemeanor; second or subsequent offense is a gross misdemeanor.
	202.350	Weapons offenses. First offense is a gross misdemeanor; second or subsequent offense is a felony.
New Hampshire	265:82-b	DUI. First offense is a violation; second or subsequent offense within seven years is a misdemeanor.
	637:11	Theft of property of \$500 value or less is a misdemeanor, but third or subsequent offense is a class B felony.
New Mexico	30-16-2	Robbery with deadly weapon. First offense is a second degree felony; second or subsequent offense is a first degree felony.
	30-9-2	Prostitution. First offense is a petty misdemeanor; second or subsequent offense is a misdemeanor.
	30-9-3	Patronizing a prostitute is a petty misdemeanor; second or subsequent offense is a misdemeanor.
North Carolina	14-107	Worthless check offenses. First offense is a misdemeanor; fourth or subsequent offenses are general misdemeanors.
	14-322	Abandonment or non-support of spouse or children. First offense is a violation; second or subsequent offense is a misdemeanor.
	20-179	DUI. Provides for five levels of punishment depending on, among other things, number of prior DUI convictions within designated periods of years.
	90-95(e)	Drug offenses. Prescribes punishments escalating from misdemeanors to felony offenses depending on number of previous convictions.
	148-45	Escape from a state prison facility is a misdemeanor, but if the person has previously been convicted of escape, the offense is a class J felony.
North Dakota	12.1-32-01	Classification of criminal offenses. Provides for offenses ranging from infractions to class AA felonies. A second or subsequent infraction offense within one year becomes a class B misdemeanor.
Ohio	2913.02	Theft. Offenses range from first degree misdemeanors to second degree felonies depending upon type and value of stolen property and number of previous theft offenses.
	2915.02	Gambling. First offense is a first degree misdemeanor; second or subsequent offense is a fourth degree felony.
	2919.25	Domestic Violence. Certain offenses escalate from fourth degree misdemeanors to fourth degree felonies if the offender has a prior conviction.
	2925.03	Drug trafficking. Offenses are upgraded in degree and mandatory sentences are required if the offender has prior drug offense convictions.

Table 3 (cont.)**Statutes providing for upgraded charges for offenders with prior convictions**

(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Ohio (cont.)	2929.12	Sentencing criteria for felony offenses. Permits court to consider offender's prior criminal history in imposing sentence for felonies for which an indefinite term is specified.
	2923.12	Carrying concealed deadly weapons. First offense is a first degree misdemeanor, but escalates to a third degree felony if the offender has a prison conviction for a weapons offense or a violent offense.
	2950.99	Sex offenses. First offenses are first degree misdemeanors; second or subsequent offenses are fourth degree felonies.
	3719.99	Drug offenses. Offenses are upgraded if offenders have prior drug offense convictions.
Oklahoma	47-11-902	Reckless driving and DUI. First offense is a misdemeanor; second conviction within 10 years is a felony.
	63-2-402.B	Drug offenses. First offense is a felony; second or subsequent offense is a more serious felony punishable by up to 20 years.
Oregon	165.065	Bad checks. First offense is a class A misdemeanor; second or subsequent offense within five years is a class C felony.
	Or. Admin. Rules 253-02-001 <i>et seq.</i>	Sentencing guidelines that provide for upgrading of various offenses based upon, among other things, prior convictions.
Pennsylvania	18-3929, 3929.1	Retail theft and library theft. If property is valued at less than \$150, first offense is a summary offense and second offense is a second degree misdemeanor. If property is valued at \$150 or more, first offense is a first degree misdemeanor and second offense is a third degree felony.
Puerto Rico	24-2401	Drug offenses. Offenses escalate to felonies with mandatory jail terms if offender has prior drug convictions.
South Carolina	44-53-395	Drug offenses. Penalty for violations relating to drug prescriptions escalates from a misdemeanor for a first offense to a felony for a second or subsequent offense.
South Dakota	32-23-2, 3, 4	DUI. First and second offenses are class 1 misdemeanors, third offense is a class 6 felony.
Tennessee	39-6-417(b)(2)	Drug offenses. First offense is a misdemeanor; second offense is a misdemeanor with a mandatory jail term; third offense is a felony.
Texas	Pen. Code § 25.05	Criminal non-support. First offense is a class A misdemeanor; second or subsequent offense is a third degree felony.
	Pen. Code § 31.03	Theft. If property is under \$20 in value, first offense is a class C misdemeanor; second offense is a class B misdemeanor. If the property value is \$200 to \$750, the first offense is a class A misdemeanor and the second offense is a third degree felony.
	Pen. Code § 43.02	Prostitution. First offense is a class B misdemeanor; second or subsequent offense is a class A misdemeanor.
Utah	76-5-202(1)(h)	Murder. Criminal homicide is murder in the first degree if, <i>inter alia</i> , the offender has a previous conviction for first or second degree murder or any violent felony.
	58-37-8	Drug offenses. Provides for upgraded offense levels for various drug offenses based upon prior drug offense convictions.

Table 3 (cont.)**Statutes providing for upgraded charges for offenders with prior convictions**

(Note: States which do not have statutes providing for upgraded charges for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Virginia	18.2-374	Obscene material. First offenses are class 4 and 5 felonies; second or subsequent offenses are class 6 felonies.
	18.2-270	DUI. First offense is a class 1 misdemeanor; second and subsequent offenses are subject to escalating mandatory fines and jail terms.
	18.2-250.1	Possession of marijuana. First offense is a simple misdemeanor; second or subsequent offense is a class 1 misdemeanor.
	18.2-251	Drug offenses. First offenders may be placed on probation.
	46.2-301	Driving with suspended or revoked license. First offense is a class 2 misdemeanor; second or subsequent offense is a class 1 misdemeanor.
	46.2-341.28	DUI (commercial vehicle). First offense is a class 1 misdemeanor; second or subsequent offenses are punishable by escalating fines and mandatory jail terms.
Washington	9.94A.310 <i>et seq.</i>	Sentencing Guidelines. Provides for presumptive sentencing ranges for criminal offenses based upon seriousness of the offense and number and seriousness of prior convictions.
West Virginia	17C-5-2	DUI. First offenses are misdemeanors; second offenses are misdemeanors with escalating mandatory jail terms; third or subsequent offenses are felonies.
	60-6-12	Illegal transportation of liquor. First offense is a misdemeanor; second or subsequent offense is a felony.
	61-3-13; 61-11-20	Petit larceny. First offense is a misdemeanor; second offense is a felony.
Wisconsin	944.21	Obscenity. First offense is a class A forfeiture; second offense is a class A misdemeanor; third or subsequent offense is a class D felony.
Wyoming	6-4-403	Abandonment or endangerment of children. First offense is a misdemeanor; second or subsequent offense is a felony.

Table 4
Statutes providing for enhanced sentences for offenders with prior convictions
(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <small>(Statutory provisions are summarized or paraphrased.)</small>
United States (Federal)	18-924(c)	Firearms violations. Provides for enhanced sentences for second and subsequent offenses involving crimes of violence or drug trafficking committed with a firearm. First offender gets five years (30 if the weapon is a machine gun or is equipped with a silencer); second and subsequent offenders get 20 years (machine guns or silencer: life without release).
	18-841(h)	Use of explosives to commit a felony. First offense - one to 10 years; second or subsequent offenses - five to 25 years with no suspension or probation.
	28-991 <i>et seq.</i>	Federal Sentencing Guidelines. Provides for sentence enhancements for all except minor offenses based upon seriousness of the offense and prior criminal record.
Alabama	15-18-9	Repeat felony offenders. Second or subsequent class B or C felony offenses are increased by one level of degree; second or subsequent class A felony offenses are punishable by 15 years to life.
	13A-5-49	Capital offenses. Provides that aggravating circumstances supporting death sentence shall include fact that offender has previously been convicted of a capital felony or a violent felony.
	13A-12-231	Drug trafficking. First offense - class A felony; second or subsequent offense is punishable under the habitual felony offender law (13A-5-9).
	20-2-71(a)(3)	Drug offenses- failure to keep required records. First offense - class A misdemeanor; second or subsequent offense - class B felony.
	32-5A-191	DUI. Provides for enhanced penalties for second or subsequent offenses, including a mandatory 60-day jail term for a third offense.
Alaska	12.55.125, .145	Repeat felony offenders. Sets out enhanced presumptive sentences for second and third convictions of various classes, if prior offenses occurred within 10 years.
	12.55.175	Sentencing of felony offenders. Provides that the presumptive sentences for felony offenders may be increased if the offenders have three or more prior felony convictions.
Arizona	13-604	Sentencing of dangerous and repetitive offenders. Provides for enhanced sentences (up to five times the normal sentence) for persons charged with felonies who have prior convictions for felonies.
	13-604.01	Dangerous crimes against children. Provides for enhanced presumptive sentences for persons with prior offenses.
	13-703	Capital offenses. Aggravating circumstances supporting death sentence include prior convictions for capital offenses or violent offenses.
	13.604.02	Offenses committed while on release. Provides for enhanced sentences (up to life without parole sooner than 25 years) for felony offenses committed while on parole, probation or other release following a prior felony conviction.
Arkansas	5-4-604	Capital offenses. Aggravating circumstances supporting death sentence include prior convictions for violent felonies and commission of offense while escaped after sentencing for felony conviction.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions**

(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Arkansas (cont.)	16-90-201	Repeat felony offenders. Provides for enhanced sentences up to one and one-half times the normal sentence, depending on the number of prior convictions and the seriousness of the new offense.
	20-64-304	Drug offenses. Provides for enhanced penalties for second offenses (up to \$2,000 fine and three to five years) and third offenses (up to \$5,000 fine and five to 10 years).
California	Pen. Code § 190.05	Murder. Provides that a person convicted of second degree murder who has a prior conviction for first or second degree murder shall be sentenced to life without parole or 15 years to life, depending on aggravating or mitigating circumstances.
	Pen. Code § 190.2	First degree murder. Provides that aggravating circumstances supporting death penalty shall include prior convictions for first or second degree murder.
	Pen. Code § 666.5	Felony vehicle theft. Second offense - three to five years.
	Pen. Code § 666.7	Receiving stolen vehicles or parts. Provides for enhanced penalty (up to \$10,000 fine or four years, or both) for third or subsequent offense.
	Pen. Code § 667.5	Violent offenses. Provides for sentence enhancements of three years for every previous prison term served for a violent offense within 10 years.
	Pen. Code § 667.51	Lewd acts with child. Provides for enhanced prison terms for previous offenses.
	Pen. Code § 667.6	Sex crimes. Provides for an enhancement of five years for each prior conviction within 10 years and a 10 year enhancement for each prior prison term served within 10 years.
	Pen. Code § 667.7	Violent offenses. Two prior prison terms for such offenses within 10 years - life with no parole prior to 20 years. Three or more prior prison terms within 10 years - life without parole.
	Pen. Code § 667.75	Drug violations. Provides for enhanced term of life without parole sooner than 17 years if offender has served two or more prison terms for drug offenses within 10 years.
	Pen. Code § 667.9, .10	Violent offenses against aged, disabled or underage persons. Provides for a two-year enhancement for each prior conviction for such offenses.
Colorado	18-18-105	Drug trafficking. Provides for a mandatory 20 year prison term for second offense of drug trafficking in or near a school.
Connecticut	53a-46a	Capital offenses. Provides that aggravating factors supporting death penalty shall include two or more prior felony convictions.
	21a-277	Drug offenses. Provides for enhancements for second or subsequent offenses up to 30 years and a \$250,000 fine.
Delaware	11-4209.	Capital offenses. Provides that aggravating factors supporting death penalty shall include a prior conviction for murder, manslaughter or a violent felony.
	16-4763	Drug offenses. Provides for enhanced penalties for second or subsequent offenses based upon the new offense committed.
	16-4764	Drug offenses. Provides for conditional discharge for first offense of possession.

Table 4 (cont.)

Statutes providing for enhanced sentences for offenders with prior convictions

(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Delaware (cont.)	21-4177	DUI. Provides for enhanced penalties for prior offenses within five years.
District of Columbia	22-104	Repeat felony offenders. Provides for enhanced sentences up to one and one-half times the normal sentence for a prior felony conviction and up to three times the normal sentence for two or more prior felony convictions.
	22-3204	Weapons violations. Provides for enhanced penalty of up to 10 years if person has previous weapons offense or previous felony offense.
Florida	921.001 <i>et seq.</i>	Sentencing Guidelines. Provides for development of guidelines that provide substantially enhanced penalties for repeat offenders.
	921.141	Capital offenses. Provides that aggravating factors supporting death penalty shall include prior conviction for a capital felony or a violent felony.
Georgia	16-5-45	Interference with custody. First and second offenses are misdemeanors punishable by escalating fines and jail terms; third or subsequent offense is a felony punishable by one to five years.
	16-8-14	Shoplifting. First, second and third offenses are misdemeanors punishable by escalating fines and jail terms; fourth or subsequent offense is a felony punishable by one to 10 years.
	16-8-41	Armed robbery. Second or subsequent offense is punishable by a mandatory prison term of at least 10 years.
	16-7-1	Burglary. First offense - one to 20 years; second offense - two to 20 years; third or subsequent offense - five to 20 years.
	16-6-4	Child molestation. First offense - one to 20 years with possibility of probation; second or third offense - mandatory minimum of five years; fourth or subsequent offense - mandatory sentence of 20 years.
	16-6-5	Enticing a child. First offense - one to 20 years with possibility of probation; second or third convictions - mandatory, minimum of five years; fourth or subsequent offense: mandatory sentence of 20 years.
	16-8-12	Theft. First offense - fine and one year minimum; second offense - three year minimum; third offense - minimum of 10 years; fourth or subsequent - punishable as habitual offender.
	16-13-30, 32, 32.1, 32.4	Drug offenses. Provides for enhanced penalties for second or subsequent offenses.
	17-10-30	Capital offenses. Provides that aggravating factors justifying death penalty shall include prior convictions for capital felonies.
	17-10-7	Repeat felony offenders. Provides for sentencing of repeat felony offenders to the maximum prescribed sentence with possibility of probation; but fourth and subsequent offenders must serve maximum prescribed sentences without probation or parole.
Hawaii	706.606.5	Repeat felony offenders. Provides for mandatory minimum sentences based upon the seriousness of the offense and the number of prior felony convictions within specified periods.
	706.661, 662	Persistent offenders. Provides for mandatory sentences of 10 years to life (based on the seriousness of the offense) for persons with two or more prior felony convictions.
	706.660.1	Felony with a firearm. Second and subsequent offenses require mandatory 10 year sentences.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions***(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)*

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Hawaii (cont.)	706.669(8)	Parole for persons sentenced to indeterminate terms. Provides for establishment of guidelines based upon seriousness of offense and prior criminal record.
Idaho	19-2514	Persistent violators. Provides for mandatory term of five years to life for third or subsequent felony offense.
	19-2515	Capital offenses. Provides that aggravating factors justifying death penalty for murder shall include a prior murder conviction.
	19-2520 C	Repeat sex offenders. Provides for adding 15 years to the maximum term if the offender has a prior sex offense within 15 years; and for adding 20 years to the maximum term if the offender has served two or more prior prison terms for sex offenses within 15 years.
	37-2739 A	Drug offenses. Provides for a mandatory minimum term of three years for drug offenders with a previous felony drug conviction.
Illinois	38-1005-5-3(c)(2)	Repeat felony offenders. Provides for mandatory term of imprisonment for class 2 or greater felonies if the offender has a prior conviction for such a felony within 10 years.
	38-1005-5-3(c)(8)	Repeat felony offenders. Provides for enhanced punishment for a person convicted of a class 1 or 2 felony if the person has two or more convictions for class 2 or greater felonies.
Indiana	35-38-1-7.1	Criteria for sentencing. Provides that court shall consider, among other things, the offender's prior criminal record.
	35-34-1-2.5	Sets out procedure for alleging prior convictions for enhancement purposes.
	16-13-6.1-16	Offenses by drug abusers or alcoholics. Provides that noncriminal treatment is not available for drug abusers or alcoholics charged with felonies if such persons have two or more prior convictions for serious or forcible felonies.
Iowa	204.411	Drug offenses. Provides that persons convicted of second or subsequent offenses may be sentenced to up to three times the prescribed punishment.
Kansas	21-4504	Repeat felony offenders. Second felony - up to twice the prescribed sentence; third or subsequent felony - up to three times the prescribed sentence.
	21-4606	Criteria for fixing minimum prison terms. Factors shall include defendant's prior criminal record.
	74-9101	Establishes sentencing guidelines commission.
Kentucky	532.080	Persistent felony offenders. Provides for enhanced terms of up to life for felony offenders who have prior felony convictions.
	532.025	Capital offenses. Provides that aggravating factors justifying death penalty shall include prior convictions for a capital offense or a serious assaultive offense.
	218A.990	Drug offenses. Provides escalating penalties for second and subsequent offenses.
	189A.010	DUI. Provides for escalating penalties (up to \$1,000 fine and a year in jail) for second and subsequent offenses.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions**

(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Louisiana	Code Crim. Proc., art. 905.4	Capital offenses. Provides that aggravating factors justifying death penalty shall include prior convictions for enumerated serious offenses.
	40.966D	Drug offenses. Sets out escalating penalties up to 20 years for second and subsequent convictions for possession of marijuana.
	14:67	Theft. Provides for enhanced sentence for second or subsequent offense of theft of property valued at less than \$100.
	14:69	Receiving stolen goods. Provides for enhanced penalty (up to \$1,000 fine and two years) for persons convicted for the third or subsequent time if the value is less than \$100.
	14:82	Prostitution. First offense - up to \$500 fine or six months, or both; second offense - up to \$2,000 fine or two years, or both; third or subsequent offense - up to \$4,000 fine and four years in prison.
	14:71	Worthless checks. Provides for enhanced penalty for third or subsequent offense of issuing worthless checks for less than \$100.
	14:62.1	Burglary of a pharmacy. First offense - one to nine years without parole; second or subsequent offense - two to 10 years without parole.
	14:98	DUI. Provides for escalating penalties for repeated offenses, up to 20 years in prison for a fourth or subsequent offense within five years.
	14:63.8	Criminal trespass. First offense - up to \$500 fine or 91 days in jail, or both; second or subsequent offense - up to \$500 fine or six months in jail, or both.
	14:106.1	Obscene devices. First offense - \$1,000 to \$2,500 fine or up to six months in jail, or both; second offense - up to three years without parole and up to \$5,000 fine.
	14:94, 95	Illegal use of dangerous weapons. First offense - up to \$1,000 fine or two years in prison, or both; second or subsequent offense within five years - up to five years in prison.
Maine	17-A-1252.5-A	Drug trafficking. Provides for lenient treatment for certain first offenders.
Maryland	27-293	Drug offenses. Provides that second or subsequent offenses shall be punished by twice the normal fines and prison terms.
	27-286	Drug trafficking. Provides for enhanced penalties (up to 40 years in prison) for persons with prior convictions and prison terms.
	27-419A	Child pornography. First offense - up to \$25,000 fine or 10 years, or both; second or subsequent offense - up to \$50,000 or 20 years, or both.
Massachusetts	265-17	Armed robbery while masked. Provides for mandatory sentences of five years for a first offense and 10 years for a subsequent offense.
	265-13B	Indecent assault and battery on a child. Provides for an enhanced term of up to life for a second or subsequent offense.
	265-22B	Rape of child by force. Provides for a mandatory term of five years to life for a second or subsequent offense.
	265-23	Rape of child without force. Provides for a mandatory term of five years to life for a second or subsequent offense.
	269-10(d)	Weapons offenses. Provides for enhanced sentences of up to 15 years without probation or parole for second or subsequent offenses.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions**
(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Massachusetts (cont.)	266-27	Theft of construction tools. First offense - up to \$100 fine or up to six months in jail, or both; second or subsequent offense - \$100 fine or six months in jail, or both.
	266-30	Larceny from common carrier. First offense - six months to two and one-half years or fine or both; second or subsequent offense - 18 months to two and one-half years or fine, or both.
	266-40	Common and notorious thief. Provides for enhanced punishment (up to 20 years) for repeat larceny offenders.
	272-61, 62	Prostitution. Provides for up to a year in jail for a second offense and for up to two and one half year for a third or subsequent offense.
	279-69	Capital offenses. Provides that aggravating circumstances justifying death penalty shall include prior convictions for murder.
	266-60	Receiving stolen goods. Provides for enhanced penalty for second or subsequent offense (up to five years in jail).
	266-62	Receiving stolen goods, repeat offender. Provides for sentencing of persistent offenders as a common fence (up to 10 years in prison).
	90-24	DUI. Provides for lenient sentencing of certain first offenders and for enhanced sentences for repeat offenders.
	94C-32	Drug offenses. Provides for enhanced penalties for repeat offenders.
Michigan	333.7413	Drug offenses. Provides enhanced penalties (up to life without parole) for second or subsequent offenses.
	244.09	Establishes sentencing guidelines commission to promulgate guidelines that, among other things, consider prior criminal histories in the sentencing approach.
	169.121	DUI. Provides for escalating penalties for subsequent offenses within five years ranging from 30 days for a first offense up to two years for a fourth or subsequent offense.
	152.021 <i>et seq.</i>	Drug offenses. Provides for sharply enhanced penalties for second or subsequent offenses, up to a mandatory four-year jail term and up to a \$1,000,000 fine.
	609.583	Burglary. Provides for a stay of execution and probation for first offense of burglary, unless the offender's criminal history score (for prior crimes) requires a presumptive executed sentence.
	609.346	Sex offenses. Provides for enhanced penalty for second offense and for a mandatory 37-year term for a third of subsequent offense.
	609.184, 185	Provides for mandatory life without parole for first degree murder if the offender has a previous conviction for a heinous crime.
Mississippi	63-11-30	DUI. Provides for penalties escalating from 24 hours in jail and a fine for a first offense up to 30 days to a year plus a fine for a third offense within five years. A fourth or subsequent offense within five years is a felony and is punishable by a fine and 90 days to five years.
	63-9-11	Motor vehicle violations. Provides for escalating penalties for repeat offenses, ranging from 10 days plus a fine for a first offense up to six months plus a fine for a third or subsequent offense within one year.
	41-29-139, <i>et seq.</i>	Drug offenses. Provides for lenient treatment of certain first offenders and enhanced penalties for certain repeat offenders.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions**

(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Mississippi (cont.)	97-31-27	Illegal sale of liquor. Provides for escalating penalties for repeat offenses up to one to five years for a third or subsequent offense.
	97-33-7	Gambling. Provides that a first offense is a misdemeanor punishable by a fine and up to three months in jail and a second or subsequent offense is a felony punishable by up to two years in prison.
	97-37-1	Weapons offenses. Provides for escalating penalties for repeat offenses, ranging from up to six months in jail and a fine for a first offense to one to five years for a third or subsequent offense. In addition, a first offense is punishable by one to five years if the offender has a prior felony conviction.
Missouri	571.015	Weapons offenses. Provides for escalating penalties for repeat offenses of using a deadly weapon to commit a felony in addition to the penalty for the felony, ranging from a mandatory minimum prison term of three years without probation for a first offense up to a mandatory minimum of 10 years without parole for a third or subsequent offense.
Montana	45-5-206	Domestic abuse. Provides for penalties of a fine and up to six months in jail for a first or second offense and for a fine of up to \$50,000 and up to five years in prison for a third or subsequent offense.
	45-5-622, 623	Offenses against children. Provides for a fine of up to \$500 and up to six months in jail for a first offense and for a fine of \$1,000 and up to six months in jail for a second or subsequent offense.
	45-5-624	Illegal possession of liquor. Provides for escalating penalties for repeat offenses, ranging from fines of \$50 for a first offense up to \$200 for a third offense and \$300 plus six months in jail for a fourth or subsequent offense.
	45-8-340	Possession of sawed-off firearm. First offense - \$200 - \$500 fine plus five days to six months in jail, or both; second or subsequent offense (or any prior felony) up to \$1,000 fine or up to five years, or both.
	45-9-101 <i>et seq.</i>	Drug offenses. Provides for substantially enhanced penalties, up to 20 years to life, for second or subsequent offenses.
	46-18-101	Sentencing criteria. Provides that criminal sentences shall reflect the criminal history of the offender and that persons who habitually violate the law shall be removed from society for long terms.
	46-18-221	Persistent dangerous weapons offenses. Provides for escalating penalties for repeat offenses (to be added to the sentence for the underlying crime) of from two to 10 years for a first dangerous weapons offense to four to 20 years for a second or subsequent offense.
	46-18-303	Capital offenses. Provides that aggravating factors justifying the death penalty shall include prior convictions for a deliberate homicide.
Nebraska	29-2523	Capital offenses. Provides that aggravating factors justifying the death penalty shall include prior convictions for murder, violent offenses or serious assaultive or terrorizing activity.
Nevada	202.820	Use of explosives in commission of a felony. First offense - mandatory one to 10 years and a fine of up to \$10,000; second or subsequent offense - mandatory two to 20 years.
	200.730	Pornography. First offense is a misdemeanor; second or subsequent offense - one to six years plus fine of up to \$5,000.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions***(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)*

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Nevada (cont.)	200.030, .033	Capital offenses. Provides that aggravating factors justifying the death penalty shall include prior convictions for murder or violent felonies.
	205.060, 067	Burglary, invasion of home. Provides for mandatory sentences without probation for second or subsequent offenders.
	205.130	Bad checks. First and second offenses are misdemeanors if amount is under \$250. Third or subsequent offenses are felonies, punishable by one to 10 years and up to \$10,000 fine.
	453.316 <i>et seq.</i>	Drug offenses. Provides for escalating penalties for repeat offenses, up to life in prison and a \$20,000 fine.
New Hampshire	651:6	Provides for extended prison terms, depending upon the seriousness of the crime, if the offender has two or more prior felony convictions.
	318-B:26	Drug offenses. Provides for enhanced penalties for repeat offenders, depending on the seriousness of the offense.
New Jersey	2C:44-1	Sentencing criteria. Provides that aggravating circumstances shall include the offender's prior criminal record.
	2C:44-3	Enhanced terms of imprisonment. Provides for enhanced terms for persistent offenders (two or more prior convictions and latest is within 10 years), professional criminals (has devoted himself to criminal activity as a livelihood) and persons with prior convictions involving the use of firearms.
	2C:20-11	Shoplifting. Provides for escalating fines for repeat offenses and for a mandatory minimum jail term of 30 days for a third or subsequent offense.
	2C:14-6	Sex offenses. Provides for a mandatory minimum jail term of five years without parole for a second or subsequent offense.
	2C:43-6(c)	Use of firearm in felony. Provides for mandatory extended term for a person convicted for the second time of using or possessing a firearm during the commission of a felony.
	NJ2C:43-6(e)	Tax violations. Provides for mandatory prison term for third or subsequent offense.
	2C:43-6(f)	Drug offenses. Provides for extended term of imprisonment for second or subsequent offense.
New Mexico	31-18-17	Repeat felony offenders. Provides for additional sentences for felony offenders with prior felony convictions, ranging from one additional year for a single prior felony conviction to eight additional years for three or more prior felony convictions.
	31-18-16	Firearms offenses. Provides for additional sentences for use of firearm in commission of felony: one additional year for a first offense and three additional years for a second or subsequent offense.
	31-20A-5, -6	Capital offenses. Provides that aggravating factors justifying death penalty shall include prior convictions and lack of a prior record shall be a mitigating factor.
	66-8-102	DUI. Provides for escalating penalties for repeat offenses up to a mandatory six-month jail term for a fourth or subsequent offense.
New York	Crim. Proc. Law § 400.15, .40	Sets out procedure for determining whether an offender has a prior conviction: requires prosecutor to file a statement prior to sentencing.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions**
(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
New York (cont.)	Pen. Law § 70.04	Requires indeterminate sentence of imprisonment for second violent felony offenders.
North Carolina	14-2-2	Use of deadly weapon in felony. Provides for an additional sentence for a second offense (to be served concurrently with the sentence for the new offense) of at least 14 years, seven of which must be served.
	14-326.1	Nonsupport of parent. First offense - up to six months and \$500 fine, or both; second or subsequent offense - up to two years or a fine, or both.
	15A-1340.4	Sentencing criteria. Provides that aggravating factors affecting sentencing of designated felons shall include prior criminal record for offenses punishable by over 60 days in jail.
North Dakota	12.1-32-04	Sentencing criteria. Provides that presence or absence of prior criminal record shall be a factor affecting decision to sentence an offender to imprisonment.
	12.1-32-09	Dangerous special offenders. Provides for extended sentences if offender is a professional criminal or has at least two prior convictions for designated offenses.
Ohio	2929.11 <i>et seq.</i>	Sentencing criteria. Provides for enhanced penalties for repeat or dangerous offenders.
Oklahoma	21-701.12	Capital offenses. Provides that aggravating factors justifying the death penalty shall include prior convictions for violent felonies.
	21-51	Repeat felony offenders. Provides for enhanced penalties for repeat offenders depending upon the number and seriousness of prior convictions; and provides for a mandatory minimum 20-year sentence for persons convicted of a third or subsequent felony offense within 10 years.
	21-52	Larceny. Provides that a person convicted of a second or subsequent larceny offense shall be sentenced to up to five years; and that any person convicted of larceny or of any attempted crime who is subsequently convicted of any other offense shall receive an enhanced sentence depending upon the seriousness of the subsequent offense.
	21-1731	Shoplifting. Provides for escalating penalties for repeat offenses, up to two to five years for third or subsequent offense.
Oregon	163.095	Murder. Provides that aggravating factors affecting sentence shall include prior convictions for murder.
	Or. Admin. Rules 253-02-001 <i>et seq.</i>	Sentencing guidelines.
Pennsylvania	42-9714	Repeat felony offenders. Provides for mandatory minimum sentence of five years for persons convicted of enumerated serious offenses who have a prior conviction for a violent felony within seven years.
	42-9715	Murder. Provides for a mandatory life sentence for murder in the third degree if the offender has a prior conviction for murder or voluntary manslaughter.
	42-9721	Sentencing Guidelines. Sets out sentencing guidelines that take into consideration the seriousness of the instant offense and the offender's prior criminal record.
	35-780-113(b), (c)	Drug offenses. Provides for enhanced penalties for repeat offenses, up to three years and a \$25,000 fine.

Table 4 (cont.)
Statutes providing for enhanced sentences for offenders with prior convictions
(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Puerto Rico	33-3301, 3302	Repeat felony offenders. Provides that sentences shall be increased by half for prior felonies within 10 years (15 years if the prior offense was the same offense as the new offense).
Rhode Island	21-28-4.01 <i>et seq.</i>	Drug offenses. Provides for enhanced penalties for repeat offenses of up to double the normal penalty.
	12-13-1.2	Offense committed while on release. Provides for enhanced penalties for offenses committed while on bail (up to 10 years for a felony and one year for a misdemeanor).
South Carolina	16-13-50	Stealing livestock. Provides for escalating penalties for repeat offenses, up to five to 25 years for a third or subsequent offense.
	16-13-65, 66	Stealing from aquaculture operations. Provides for escalating penalties for repeat offenses, up to a \$5,000 fine and six months to two years for a third or subsequent offense.
	16-15-110	Prostitution. Provides for escalating penalties for repeat offenses, up to a \$3,000 fine or a year in jail, or both, for a third or subsequent offense.
	16-13-110	Shoplifting. Provides for escalating penalties for repeat offenses, up to one to five years for a third or subsequent offense.
	44-53-370	Drug offenses. Provides for escalating penalties for repeat offenses.
South Dakota	22-7-7 <i>et seq.</i>	Repeat offenders. Provides for enhanced penalties for repeat felony convictions depending on the number and seriousness of prior offenses.
	23A-27A-1	Capital offenses. Provides that aggravating factors justifying the death penalty shall include prior felony convictions or prior convictions for serious assaultive crimes.
Tennessee	39-13-204	Murder. Provides that aggravating circumstances justifying the death penalty shall include prior convictions for violent felonies.
	40-35-106	Multiple offenders. Provides for enhanced sentences for persons with prior convictions, depending on the seriousness of the present offense and the number and seriousness of prior offenses.
	40-35-107	Persistent offenders. Provides for enhanced sentences for persons with two or more prior felony convictions, depending on the seriousness of the present offense and the number and seriousness of the prior offenses.
	40-35-114	Sentencing criteria. Provides that factors supporting enhanced sentences shall include prior convictions.
	40-35-202	Charging repeat offenders. Provides that the prosecutor must file a statement of intent to seek an enhanced sentence at least 10 days before trial.
Texas	Pen. Code § 12.42	Repeat felony offenders. Provides for enhanced terms for repeat felony offenders depending on the seriousness of the present offense and the number and seriousness of prior offenses.
	Pen. Code § 12.43	Repeat misdemeanor offenders. Provides for enhanced sentences based upon the seriousness of the present offense and the number and seriousness of prior offenses.
Utah	76-5-202	Murder. Criminal homicide is murder in the first degree if, among other things, the offender has previously been convicted of murder or a violent felony.

Table 4 (cont.)**Statutes providing for enhanced sentences for offenders with prior convictions**

(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Utah (cont.)	76-3-407	Repeat sex offenders. Provides for an additional three year term (to be served consecutively) for each prior conviction for a felony sexual offense.
	76-3-408	Habitual sex offenders. Provides for life without parole for third or subsequent felony sex offense.
Vermont	13-1028	Assault on a police officer. First offense - 30 days to one year; second or subsequent offense - two to 10 years.
	13-2311(a)	Aggravated murder. Provides that murder shall be aggravated if, among other things, the offender has a prior conviction for murder.
	13-2577	Shoplifting of property of \$100 value or less. First offense - fine of up to \$300 or up to six months in jail, or both; second or subsequent offense - fine up to \$500 or up to two years in jail, or both.
	13-2825	Sexual exploitation of children. First offense - fine up to \$20,000 and up to 10 years in prison; second or subsequent offense - fine up to \$50,000 and one to 15 years in prison.
	18-4230(a)(1)	Possession of marijuana. First offense - up to \$500 fine or six months in jail, or both; second or subsequent offense - up to \$2,000 fine or up to two years in prison, or both.
	18-4238	Repeat drug offenses. Provides for penalties of up to twice the normal penalties.
Virgin Islands	19-604 <i>et seq.</i>	Drug offenses. Provides for escalating penalties for repeat offenses, up to 10 years in prison and a \$60,000 fine.
Virginia	19.2-297	Larceny. Provides for a penalty of 30-60 days for a second offense and punishment as a class 6 felon for a third or subsequent offense.
	18.2-248	Drug offenses. Provides for five to 40 years plus a \$100,000 fine for a first offense and five years to life plus a \$100,000 fine for a second or subsequent offense.
	18.2-53.1	Use of firearm in felony. First offense - mandatory two year term; second or subsequent offense -mandatory four year term.
Washington	9.94A.310 <i>et seq.</i>	Sentencing Guidelines. Provides for recommended sentences based on the seriousness of the offense and the number and seriousness of prior offenses.
	69.50.408	Drug offenses: distribution to a minor. Provides for a penalty of twice the normal penalty for a second or subsequent offense.
	69.50.410	Drug trafficking. Provides for enhanced penalties (up to a mandatory 10 years in prison) for second or subsequent offenses.
West Virginia	61-8-4	Lewd and lascivious cohabitation. First offense - up to \$50 fine and/or six months in jail; second or subsequent offense - six months to 12 months.
	60A-4-407, 408	Drug offenses. Provides for conditional discharge for certain first offenses for marijuana possession and for terms of up to twice the usual term for second or subsequent offenses.
Wisconsin	973.011	Sentencing guidelines. Provides for promulgation of sentencing guidelines that, among other things, include consideration of offenders' prior criminal histories.

Table 4 (cont.)
Statutes providing for enhanced sentences for offenders with prior convictions
(Note: States which do not have statutes providing for enhanced sentences for offenders with prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Wisconsin (cont.)	939.62	Repeat offenders. Provides for enhanced sentences based upon the number and seriousness of prior convictions and the period during which they were committed.
	939.621	Domestic abuse. Provides for the penalty to be enhanced by up to two years if the offender has a prior arrest for domestic abuse within 24 hours.
	973.12	Repeat offenders. Sets out procedures for alleging and proving prior convictions for enhancement purposes.
	346.62, 64, 65	DUI and reckless driving. Provides for enhanced fines and jail terms for second and subsequent offenses within specified periods.
	161.47, 48	Drug offenses. Provides for conditional discharge for first offense for possession; and provides for punishment of second and subsequent offenses by imposition of up to twice the usual penalties.
	939.63(2)	Dangerous weapons. Provides for presumptive terms of imprisonment of five years for the second or subsequent offense of using a dangerous weapon in the commission of a felony.
Wyoming	6-2-102	Murder. Provides that aggravating factors justifying the death penalty shall include any prior convictions for murder or violent felonies.
	6-2-306	Sexual assault. Provides for enhanced punishment for repeat offenders, based upon the level of seriousness of the offense.
	35-7-1037, 1038	Drug offenses. Provides for conditional discharge of some first offenders charged with possession; and provides for punishment of second or subsequent offenses by up to twice the usual penalty.

Table 5
Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals

(Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
United States (Federal)	28 U.S.C. §§ 994(h)	Provides that sentencing guidelines shall ensure substantial prison terms for persons who commit crimes of violence and have two or more previous felony convictions for crimes of violence or serious drug offenses.
	Sentencing Guidelines §4B1.1	Provides for sentencing of career offenders (as defined above) at the maximum criminal history category level, which substantially increases the maximum and minimum sentences.
Alabama	13A-5-9	Provides for enhanced punishment for persons who commit felonies after committing prior felonies, ranging from one grade level enhancement for persons who have one prior felony conviction to life imprisonment without parole for persons who have three prior felonies and commit another class A felony.
	13A-12-231	Provides for sentencing under the recidivist statute of persons who commit serious drug offenses after one or more prior felony convictions.
	32-5A-191	Repeat DUI offenders. Provides for sentencing to increasingly enhanced fines and jail terms based on number of prior DUI convictions within specified time periods.
Alaska	12.55.155	Provides for sharply enhanced sentencing for aggravating factors, including prior felony convictions or repeated offenses similar to the instant offense.
Arizona	13-604	Dangerous and repetitive offenders. Provides for enhanced sentences for repetitive offenders up to five times the normal sentence, with limited parole eligibility, based upon the seriousness of the offense charged and the number and seriousness of prior offenses.
	13-604.01	Dangerous crimes against children. Provides for enhanced sentences, up to life imprisonment without parole, for persons who commit enumerated offenses against children and who have prior convictions for such offenses.
Arkansas	5-4-501	Provides for sentencing of habitual offenders to enhanced terms, up to life imprisonment for persons with four or more prior felonies, depending on the seriousness of the present offense and the number of prior felony convictions.
	16-90-202	Provides that persons who commit murder, rape, carnal abuse or kidnapping and who have two or more prior convictions for any such offenses shall be deemed habitual criminals and sentenced to life imprisonment, if the death penalty does not apply.
California	Pen. Code 667.7	Provides for enhanced sentences as habitual offenders for persons who commit violent felonies and who have served two or more previous sentences for violent or serious offenses within the previous 10 years.
Colorado	16-13-101	Provides that persons convicted of felonies who have previously been convicted of two felonies within the past 10 years or three felonies at any time shall be adjudged to be habitual offenders and sentenced to 25-50 years (two previous felonies) or life imprisonment (three or more previous felonies), if not sentenced to death.
Connecticut	53a-40	Provides for enhanced sentences for persistent dangerous felony offenders, persistent serious felony offenders, persistent larceny offenders and persistent felony offenders, depending on the offense charged and the number and nature of prior convictions and sentences.

Table 5 (cont.)
Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals

(Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Delaware	11-4214	Provides for enhanced penalties for persons convicted for the third time of enumerated serious felonies (mandatory life imprisonment if death is not imposed) or for the fourth time of any felony offense (up to life imprisonment).
District of Columbia	22-104a	Provides for enhanced sentences up to life imprisonment for persons convicted for the third time of felony offenses.
Florida	775.084 <i>et seq.</i>	Provides for enhanced penalties (up to life without parole) for habitual felony offenders (two or more previous felonies) and habitual violent felony offenders (previous violent felony conviction). Requires law enforcement agencies to employ enhanced law enforcement management efforts and resources for investigation, apprehension and prosecution of career criminals.
Georgia	17-10-7(b)	Provides that persons convicted of fourth felony must be given maximum term and cannot be paroled.
Hawaii	706-606.5	Provides for enhanced sentences (up to 30 years imprisonment) for persons with prior felonies within specified periods, depending on the seriousness of the charged offense and the number of prior felony convictions.
	706-661, 662	Provides for enhanced penalties (up to life) for persistent offenders (two or more previous felonies) and professional criminals.
	845-1 <i>et seq.</i>	Establishes a career criminal prosecution program to provide additional financial and technical resources for the prosecution of persons with prior convictions of designated types within specified periods.
Idaho	19-2514	Provides for mandatory prison terms of five years to life for persistent violators - persons who have three or more felony convictions.
Illinois	38-33B-1	Provides for mandatory life terms, if death penalty is not imposed, for persons who commit violent offenses and who have two or more prior convictions for violent offenses within 20 years.
Indiana	35-50-2-7.1, -8	Provides for adding eight to 30 years to normal sentences for habitual felony offenders who have two or more prior felony convictions, depending on the crime charged, the nature of the previous offenses and the time period during which they were committed.
	35-50-2-10	Provides for enhanced terms of three to eight additional years for habitual drug offenders - those with two or more drug offense convictions within specified periods.
Iowa	902.8, 9	Provides for mandatory minimum prison terms for persons convicted of designated felonies who have two or more felony convictions.
Kansas	21-4504	Provides for sentences of up to twice the prescribed minimum and maximum sentences for persons convicted for the second time for a felony offense and for up to three times the prescribed minimum and maximum for persons convicted of three or more felonies.
Kentucky	532.080	Provides for enhanced prison terms for persistent felony offenders - those who have one or more prior felony convictions within specified periods. Sentences range from the next highest degree of offense to life, depending on the seriousness of the present offense and the number of prior felonies.

Table 5 (cont.)
Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals

(Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Louisiana	15:529.1	Provides for enhanced sentences up to life without parole for felony offenders with prior felony convictions, depending on the number and nature of the prior offenses.
Maine	29-2292	Habitual motor vehicle offenders. Provides for revocation of license for persons with three or more serious violations within five years.
Maryland	27-643B	Provides for a mandatory term of 25 years for a person convicted of a crime of violence who has two prior convictions for crimes of violence and who has served at least one term of imprisonment for such crimes; and for a mandatory life term without parole for a person convicted of a crime of violence who has served three prior prison terms after convictions for crimes of violence.
Massachusetts	279-25	Provides for mandatory maximum prison terms for persons convicted of felonies who have been convicted and sentenced for felonies at least twice before.
	66-40	Provides for prison terms of up to 20 years for habitual larceny offenders.
Michigan	769.10, 11, 12	Provides for enhanced prison terms up to life imprisonment for felony offenders who have prior felony convictions, depending on the seriousness of the new offense and the number of prior felony convictions.
Minnesota	609.152	Provides for judges to depart from sentencing guidelines and impose aggravated sentences for dangerous offenders (charged with a violent crime and two or more prior convictions for violent crimes) and career offenders (charged with a violent crime and four or more prior convictions for violent crimes).
Mississippi	99-19-81	Provides for mandatory prison terms up to life without parole for persons who are convicted of felonies and who have two or more prior felony convictions for which they were sentenced to prison terms of a year or more.
Missouri	558.016, 019	Provides for enhanced prison terms with limited parole eligibility for felony offenders who are adjudged to be prior offenders (one prior felony conviction), persistent offenders (two or more prior felony convictions), dangerous offenders (charged with a dangerous felony and has a prior conviction for a serious or dangerous felony) and class X offenders (three or more prior felony convictions).
	558.018	Provides for mandatory prison terms of 30 years without parole or probation for persons convicted of enumerated sexual offenses who have one or more previous convictions for such offenses.
Montana	46-18-501, 503	Provides for sentencing of persons charged with felonies who have prior felony convictions within five years as persistent felony offenders. Offenders receive mandatory minimum jail terms that cannot be suspended, depending on the number of prior felony convictions.
Nebraska	29-2221	Provides for mandatory minimum term of 10 years for persons convicted of felonies who have two or more prior convictions and prison terms for felonies.

Table 5 (cont.)
Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals

((Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.))

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Nevada	207.010	Provides for mandatory prison terms of 10 to 20 years for persons convicted of fraud, theft or any felony who have two prior felony convictions or three prior fraud or larceny convictions, and life for persons with three prior felonies or five prior fraud or larceny convictions.
New Hampshire	159:3-a	Provides for mandatory prison term of 10 to 40 years for armed career criminals, persons who have three or more violent dangerous felony convictions and who are convicted of owning or possessing a firearm.
New Jersey	2c:44-3	Provides for enhanced sentences for persistent offenders (two prior convictions, at least one within 10 years) and persons who have at least one prior conviction for a felony committed with a firearm.
New Mexico	31-18-17	Provides for felony sentences to be increased by one year for one prior felony conviction, by four years for two prior felony convictions, and by eight years for three or more prior felony convictions.
	31-18-18	Requires law enforcement officials to report to the district attorney if they know that a convicted person is a habitual offender.
	31-18-19	Requires district attorney to file information if he learns that a convicted person is a habitual criminal.
New York	Cr. Proc. Law § 400.16; Pen. Law § 70.01.	Provides for enhanced sentences for persistent violent felony offenders - persons convicted of a violent felony who have two or more previous convictions for violent felonies.
North Carolina	14-7.1 <i>et seq.</i>	Provides for mandatory prison terms of at least 14 years for persons convicted of felony offenses who have three or more prior felony convictions.
North Dakota	12.1-32-09	Provides for enhanced prison terms of 10 years to life for dangerous special offenders - those who have two prior convictions for class B or above felonies or one such felony conviction and two other felony convictions.
Ohio	2950.99	Provides for punishment as fourth degree felon of persons convicted two or more times of enumerated sex offenses.
Oklahoma	21-51	Provides for mandatory prison terms of up to 20 years of persons convicted of felonies who have previous felony conviction, depending on the number of prior felonies and the seriousness of the new offense.
Oregon	161.725	Provides for prison term of up to 30 years for dangerous offenders based in part upon previous felony convictions.
Pennsylvania	42-9721	Sentencing guidelines. Provides for extended sentences based upon seriousness of the charged offense and number and seriousness of prior convictions.
Puerto Rico	33-3375	Provides for mandatory prison term of 20 to 99 years for any person convicted of a felony who has two or more prior felony convictions.
Rhode Island	11-41-24	Provides for mandatory prison term and fines for persons convicted three or more times of larceny, shoplifting or receiving stolen goods.
	12-19-21	Provides for mandatory term of up to 25 years for persons convicted and sentenced for felonies who have two or more previous felony convictions and sentences.
South Carolina	17-25-45	Provides for sentence of life without parole for any person convicted for the third time of a crime of violence.

Table 5 (cont.)
Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals

(Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
South Dakota	22-7-7 <i>et seq.</i>	Provides for enhanced sentences for persons convicted of felonies who have prior felony convictions, depending on number and seriousness of prior felonies.
Tennessee	39-6-417	Provides for sentencing as a class X felon of any person found to be a habitual drug offender, based upon number and seriousness of prior drug convictions.
	40-35-106	Provides for enhanced sentences of persons found to be persistent offenders, based upon number, seriousness and time frame of prior felony convictions.
Texas	Pen. Code § 12.42	Provides for mandatory terms up to life for persons convicted of felonies who have previous felony convictions, depending on the number of prior convictions.
	Pen. Code § 12.43	Provides for mandatory jail terms of repeat and habitual misdemeanor offenders, depending on the number and seriousness of prior offenses.
Utah	76-3-407	Provides for enhanced sentences for habitual sex offenders - three additional years for each prior felony sex offense.
	76-3-408	Provides for mandatory sentence of life without parole for persons convicted for third time of felony sex offenses.
	76-8-1001,1002	Provides for an enhanced prison term of five years to life for persons convicted of felonies who have two or more prior felony convictions, depending on the number and seriousness of the prior offenses.
Vermont	13-11	Provides for life term for any person convicted for the fourth time of a felony.
Virgin Islands	14-61	Provides for enhanced terms of imprisonment of persons convicted of felonies or misdemeanors who have prior convictions, the length of the prison terms depending on the number and seriousness of the prior offenses and the seriousness of the new offense.
	19-612, 614	Provides for mandatory prison term of 20 years to life for a person convicted of drug offenses as a continuing criminal enterprise if the person has a prior conviction for such drug offenses as a continuing criminal enterprise.
Virginia	19.2-297	Provides for mandatory jail term for person convicted for second time of larceny and for punishment as a class 6 felony for person convicted of larceny for a third time.
Washington	9.92.090	Provides for mandatory prison terms of 10 years to life for persons convicted of fraud, larceny or any felony who have previous convictions for such offenses, depending upon the number and nature of the prior offenses.
West Virginia	61-11-18 <i>et seq.</i>	Provides that a person convicted of a felony shall receive an additional five years if he has a prior felony conviction and shall receive a life sentence if he has two or more prior felonies.
	62-8-4	Provides that if a prisoner is received at a state prison and the warden knows that the person has a prior felony record but has not been sentenced as a repeat or habitual offender, he shall notify the court and the court shall direct that an information be filed.

Table 5 (cont.)
Statutes authorizing sentencing of persistent recidivists to enhanced terms as career criminals or habitual criminals

(Note: States which do not have statutes authorizing sentencing of persistent recidivists to enhanced terms as career or habitual criminals are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Wisconsin	351.02 <i>et seq.</i>	Provides for sentencing of repeat habitual traffic offenders.
	939.62; 973.12	Provides for enhanced prison terms (up to 10 additional years) for any person with a prior felony conviction within five years or three prior misdemeanor convictions within five years.
Wyoming	6-10-201, 203	Provides for mandatory terms of 10 to 50 years for any person convicted of a violent felony who has two prior felony convictions, and life imprisonment for any person convicted of a violent felony who has three or more prior felony convictions.

Table 6
Statutes that require or permit consideration of prior criminal history
in decisions concerning probation

(Note: States which do not have statutes that require or permit consideration of prior criminal history in decisions concerning probation are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
United States (Federal)	18-3562(a)	Requires courts to consider defendant's prior criminal history in deciding whether to impose a term of probation and in determining the length and conditions of the probationary term.
Alabama	15-22-51	Provides that a court may not place a defendant on probation without ordering a probation officer to prepare a report including, among other things, the defendant's criminal history.
Alaska	12.55.005,.015	Authorizes court to impose prison term or probation depending upon, among other things, the prior criminal history of the defendant.
Arizona	13-604	Limits or denies probation eligibility for certain dangerous and repetitive offenders, depending upon the nature of the offense and the defendant's prior criminal history.
	13-604.01	Limits or denies probation eligibility for persons convicted of dangerous crimes against children.
	13-604.02	Denies probation for persons convicted of felony offenses while on probation, parole, work release or any other form of release or escape.
	13-1406.01	Denies probation for a person convicted of sexual assault of a spouse who has a prior conviction for the same offense.
	13-3407 <i>et seq.</i>	Provides for probation for certain drug offenders who have no prior felony convictions and limits or denies probation eligibility for persons with prior convictions.
Arkansas	16-93-303	Provides for probation for convicted persons who have no prior felony convictions.
	16-93-304	Requires judges to query the State criminal history repository to confirm first offender status prior to granting probation under § 303 and to report any order of probation to the repository. Also requires the repository to notify a sentencing court if it determines that an offender has been granted first offender probation more than once.
California	Pen. Code § 1203(e)(4), (6)	Denies probation to persons with two or more prior felony convictions or with any prior felony conviction if the present offense is a violent felony or involved the use of a deadly weapon, except in unusual cases where the interests of justice would best be served by granting probation.
Colorado	16-11-201	Denies probation for any offender with two or more prior felony convictions or with one prior felony who is convicted of a class 1, 2, or 3 felony.
Florida	948.01	Authorizes probation in non-capital cases, and requires the court to order an investigation and report by the Department of Corrections which must include information concerning the defendant's prior criminal history.
Georgia	42-8-34	Authorizes criminal courts to grant probation to convicted persons in non-capital cases and authorizes the courts to order the probation supervisor to make an investigation and report which must include information concerning the defendant's prior criminal history
	42-8-60	Authorizes probation before adjudication to persons with no prior felony convictions, and requires the court to obtain a criminal history from the State criminal record repository prior to sentencing under this section.

Table 6 (cont.)
Statutes that require or permit consideration of prior criminal history
In decisions concerning probation

((Note: States which do not have statutes that require or permit consideration of prior criminal history in decisions concerning probation are omitted from the table.))

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Georgia (cont.)	16-6-4	Prohibits probation for a person convicted of child molestation for a third or subsequent time.
	16-6-5	Prohibits probation for a person convicted of enticing a child for indecent purposes for a third or subsequent time.
	16-6-13	Prohibits probation for a person convicted for a second or subsequent time of pandering involving a minor.
	16-7-1	Prohibits probation for a person convicted of burglary for a third or subsequent time.
	16-8-12	Prohibits probation for a person convicted of theft for a second or subsequent time.
Hawaii	706-621(e)	Provides that factors to be considered in favor of granting probation shall include the absence of a prior criminal or juvenile record.
Idaho	19-2521	Provides that factors favoring the granting of probation shall include the absence of a prior criminal or juvenile record and that probation may be denied if the defendant is a multiple offender or a professional criminal.
Illinois	38-1005-6-1	Requires courts to impose a sentence of probation or conditioned discharge unless the offense carries a mandatory prison term or the court decides that prison is necessary to protect the public or avoid deprecating the seriousness of the offense, having regard to, among other things, the criminal history of the offender.
Indiana	35-50-2-2	Prohibits probation for certain persons convicted of serious offenses who have prior felony convictions within specified periods.
Iowa	907.3	Prohibits probation for persons with previous felony convictions or persons who have previously been placed on probation after a felony conviction or placed on probation twice after misdemeanor convictions.
	204.409	Provides for probation for certain drug offenders who have no prior drug offense convictions.
Kansas	21-4606a	Provides that the presumptive sentence shall be probation for a person convicted of a class E felony who has no prior criminal or juvenile record.
Kentucky	532.045	Prohibits probation for persons convicted of enumerated sexual offenses against minors who have a previous conviction for any such offense.
	532.080(7)	Prohibits probation for persistent felony offenders - persons convicted of felonies who have one or more prior felony convictions.
Louisiana	14:62.1	Prohibits probation for persons convicted of burglary of a pharmacy for a second or subsequent time.
	14:98	Limits or prohibits probation for persons convicted for a second or subsequent time of driving while intoxicated.
	14:106.1	Prohibits probation for a person convicted of promotion of obscene devices for a second or subsequent time.
	15:529.1G	Prohibits probation for persons sentenced under the habitual offenders law.

Table 6 (cont.)
Statutes that require or permit consideration of prior criminal history
In decisions concerning probation

(Note: States which do not have statutes that require or permit consideration of prior criminal history in decisions concerning probation are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Louisiana (cont.)	Code Crim. Proc. art. 894.1 B(7)	Provides that factors favoring probation shall include the absence of a prior criminal or juvenile record.
Maryland	27-641(a)(3)	Prohibits probation prior to judgment for second or subsequent controlled dangerous substances offenses.
Massachusetts	94C-32H	Prohibits probation for persons convicted of certain drug offenses for the second or subsequent time.
	276-87	Prohibits probation for persons convicted for the second or subsequent time of enumerated sex offenses against children.
Michigan	333.7411(1)	Provides for probation without judgment for persons convicted of drug possession who have no prior convictions for drug offenses.
	333.7413	Prohibits probation for persons convicted of enumerated drug offenses for a second or subsequent time.
Mississippi	47-7-33	Authorizes probation except in capital cases and for any person with a prior felony conviction.
	99-19-81	Prohibits probation for persons sentenced under the habitual criminal law.
Missouri	217.760	Requires investigation and report before sentencing to probation in felony and class A misdemeanor cases, such report to include information about the defendant's prior criminal record.
	549.371	Authorizes courts to order investigation and report prior to granting of probation, such report to include the defendant's prior criminal record, if any.
Montana	46-18-101	Provides that sentences shall reflect, among other things, the offender's criminal history and that dangerous habitual offenders shall be imprisoned rather than granted probation.
	46-18-201(6)	Prohibits probation for any person convicted of a felony who has a prior felony conviction.
Nebraska	29-22601	Authorizes courts to grant probation in cases that do not carry mandatory prison sentences unless the court finds that prison is necessary to protect the public having regard to, among other things, the history of the offender. Further provides that the absence of a prior criminal or juvenile history shall be a factor favoring probation.
Nevada	176.135, 145	Requires presentence reports prior to granting of probation in felony cases, such reports to include any prior criminal record of the defendant.
New Jersey	2C:44-1	Provides that criteria for granting probation shall include the extent and seriousness of the defendant's prior criminal record and provides further that probation shall be the presumptive sentence for persons convicted of less serious offenses who have no previous convictions.
New York	Cr. Proc. Law § 390.20, .30	Provides that a court must order a presentence report before sentencing in any felony case or before granting probation in a misdemeanor case, such report to include the defendant's prior criminal and juvenile history.
North Carolina	14-2.1	Prohibits probation for a person convicted of a felony involving use of a deadly weapon who has a prior conviction for such an offense.

Table 6 (cont.)
Statutes that require or permit consideration of prior criminal history
In decisions concerning probation

(Note: States which do not have statutes that require or permit consideration of prior criminal history in decisions concerning probation are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
North Carolina (cont.)	15A-1341(a)	Authorizes probation in certain non-capital cases if the defendant has not previously been convicted of a felony or a misdemeanor involving moral turpitude and has not previously been granted probation.
North Dakota	12.1-32-04	Provides that factors favoring probation rather than imprisonment shall include the absence of a criminal or juvenile record.
Ohio	2951.02	Provides that a factor favoring probation shall be the absence of a criminal or juvenile record, that a factor favoring denying probation shall be a previous violation of probation or parole, and that probation shall be prohibited for repeat or dangerous offenders.
Pennsylvania	42-9721	Sets out sentencing guidelines that specify sentence ranges, including probation, based upon the seriousness of the offense charged and the extent of the offender's prior criminal record.
Puerto Rico	24-2404	Authorizes probation for persons convicted of drug possession for the first time.
	34-1027	Provides for probation in enumerated felony and misdemeanor cases if the defendant has no prior felony conviction.
South Carolina	24-21-420	Provides that if the services of a probation officer are available, no person charged with a felony shall be placed on probation unless the court orders a presentence investigation and report that must include the offender's prior criminal record.
	44-53-370	Prohibits probation for persons convicted for the second or subsequent time of enumerated drug offenses.
	44-53-450	Permits probation for persons convicted of drug possession for the first time.
South Dakota	23A-27-5, 6	Requires a presentence report, which must include the offender's prior criminal record, prior to granting probation unless the defendant waives the investigation with the court's consent or the court finds the investigation and report to be unnecessary and states the reasons on the record.
Tennessee	40-35-303	Prohibits probation for persons convicted of burglary or breaking and entry for the second or subsequent time.
Texas	Code Crim. Proc. art. 42.12 §§ 6, 8	Authorizes probation in felony cases, if among other things, the defendant has never before served a term of imprisonment for a felony conviction.
Vermont	28-204(a), 205	Requires a presentence report before sentencing, including the granting of probation, of any person convicted of a felony, such report to include the offender's prior criminal record.
Virginia	19.2-299	Provides that before pronouncing sentence, including probation, in a felony case, a court may (and must if the defendant so moves) order a presentence report which must include the defendant's criminal history.
Washington	9.95.200	Authorizes sentencing courts to request presentence reports before determining whether to grant probation, such reports to include the defendant's prior criminal history.
West Virginia	62-12-7	Provides that no person convicted of a felony shall be released on probation until the court obtains a presentence report which must include information concerning the defendant's prior criminal record.

Table 6 (cont.)
Statutes that require or permit consideration of prior criminal history
In decisions concerning probation

(Note: States which do not have statutes that require or permit consideration of prior criminal history in decisions concerning probation are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Wyoming	7-13-303	Authorizes court to order presentence report prior to granting probation, such report to include the criminal record of the defendant.
	R. Cr. Proc. 33(c)	Provides that the probation service shall make a presentence report prior to the granting of probation unless the court directs otherwise, such report to include the defendant's prior criminal record.

Table 7

Statutes authorizing presentence reports that shall or may include prior convictions

(Note: States which do not have statutes authorizing presentence reports that shall or may include prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
United States (Federal)	18-3552(a)	Requires a presentence report under Rule 32(c) of the Fed. Rules of Crim. Proc. before the imposition of sentence.
	Rules of Cr. Proc., R. 32(c)(2)	Requires presentence reports to contain the defendant's prior criminal history.
Alabama	13A-5-5	Requires a presentence report prior to sentencing for a felony, on motion of either party.
	Rules of Crim. Proc., R. 3(b)	Requires presentence report to include the defendant's prior criminal and juvenile record.
Alaska	12.55.025	Requires courts in felony cases and other enumerated cases to obtain a presentence report.
	R. Crim. Proc. 32(c)(1)	Requires presentence reports to include the defendant's prior criminal history.
Arkansas	5-4-102	Authorizes courts to order presentence reports. Such reports shall contain the defendant's history of delinquency or criminality.
California	Pen. Code § 1203(b)	Requires a presentence report in every felony case in which the defendant is eligible for probation and makes such reports discretionary in misdemeanor cases.
	Sup. Ct. Sentencing Rules, R. 419	Requires presentence report to include a summary of the defendant's criminal and juvenile history.
Colorado	16-11-102(1)	Requires presentence reports in felony cases, and authorizes court to order such reports in misdemeanor cases. Requires such reports to include the defendant's past criminal record.
Connecticut	54-91a	Requires presentence reports in felony cases and makes them discretionary in other cases. Requires such reports to include the defendant's criminal history.
Delaware	11-4331	Gives courts discretion to order presentence reports, which shall contain an evaluation of the defendant's prior criminal history.
District of Columbia	Rules Crim. Proc. R. 32	Requires presentence reports unless the defendant waives, with the court's consent, or the court finds a report to be unnecessary and sets out reasons on the record. The report is required to contain the defendant's prior criminal record.
Florida	921.231(e), (j)	Requires presentence reports in felony cases and makes them discretionary in misdemeanor cases, such reports to include an explanation of the defendant's criminal record, including his version and explanation.
Georgia	17-10-2	Requires presentence hearing in felony cases at which the court must hear evidence of the defendant's prior convictions.
Hawaii	706.601, .602	Requires presentence reports in felony cases or if defendant is under 22 years of age and has a prior conviction. Reports are discretionary in other cases. Reports must contain the defendant's history of delinquency or criminality.
Idaho	19-2515	Requires a presentence report in capital cases, which must include aggravating and mitigating circumstances, including evidence of the defendant's prior criminal record.
Illinois	38-1005-3-1, 2	Requires presentence reports in felony cases and makes them discretionary in misdemeanor cases, such reports to include the defendant's history of delinquency or criminality.

Table 7 (cont.)

Statutes authorizing presentence reports that shall or may include prior convictions

(Note: States which do not have statutes authorizing presentence reports that shall or may include prior convictions are omitted from the table.)

State	Citation	Statutory provision
(Statutory provisions are summarized or paraphrased.)		
Indiana	35-38-1-8, -9	Requires presentence reports in felony cases, such reports to contain the defendant's history of delinquency or criminality.
Iowa	901.2, 3	Authorizes courts to order presentence reports in all cases, which must contain the defendant's criminal record.
Kansas	21-4604	Presentence reports are discretionary in misdemeanor cases and required in felony cases unless the court has adequate information. Presentence reports must include the criminal record of the defendant.
Kentucky	532.025	Requires presentence hearing in death penalty cases, at which the court must hear evidence of aggravating and mitigating circumstances, including the defendant's prior criminal history.
	532.050	Requires presentence reports in felony cases, such reports to include the defendant's history of delinquency or criminality.
Louisiana	Code Crim. Proc. art. 875	Presentence reports are discretionary with the court and must contain the defendant's history of delinquency or criminality.
Maine	R. Crim. Proc. 32(c)	Presentence reports are discretionary with the court, and must contain the defendant's prior criminal record.
Massachusetts	276-85	Requires probation officers to make presentence reports in felony cases, including information relative to all prior criminal prosecutions.
	R. Crim. Proc. 28(d)	Requires probation officer to make presentence reports in all cases brought before courts, including information about prior criminal prosecutions or juvenile complaints.
Minnesota	609.115	Presentence reports are discretionary and must contain the defendant's criminal record.
Mississippi	47-7-9(3)(a)	Presentence reports are discretionary in felony cases and must contain the defendant's criminal history.
Missouri	217.760	Requires the board of probation and parole to prepare presentence reports in felony cases and class A misdemeanor cases. Such reports must contain the defendant's prior criminal record.
	549.37	Requires the board of probation and parole to make presentence reports at the request of a circuit court, such reports to include the defendant's prior criminal record.
Montana	46-18-111, -112	Requires presentence reports for enumerated serious offenses and makes them discretionary in other cases. Presentence reports must contain the defendant's criminal record.
Nebraska	29-2261(3)	Presentence reports are required in felony cases, unless impractical, and are discretionary in other cases. Such reports must include the defendant's history of delinquency or criminality.
Nevada	176.145(1)	Presentence reports are required in felony cases, unless a recent one exists, and are discretionary in other cases. Such reports must include the defendant's prior criminal record.
New Jersey	2C:44-6	Presentence reports are required when specified by rules of court and discretionary in other cases. Reports must contain the defendant's history of delinquency or criminality.
New York	Cr. Proc. Law § 390.10	Requires the court to obtain a fingerprint-based criminal history report prior to sentencing in felony cases and other designated cases.

Table 7 (cont.)
Statutes authorizing presentence reports that shall or may include prior convictions
(Note: States which do not have statutes authorizing presentence reports that shall or may include prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
New York (cont.)	Cr. Proc. Law § 390.20	Requires presentence reports in felony cases and in misdemeanor cases if the defendant can receive probation or a sentence of more than 90 days. Reports are discretionary in other cases.
	Cr. Proc. Law § 390.30	Presentence reports must contain the defendant's history of delinquency or criminality.
North Carolina	15A-1332	Presentence reports are discretionary. They must contain information concerning the defendant's previous delinquency or criminal record.
North Dakota	R. Crim. Proc. 32(d)	Presentence reports are discretionary with the court. The report may contain the defendant's prior criminal record.
Ohio	2951.03	Requires presentence report with information about defendant's criminal record, before granting probation in felony cases.
	R. Crim Proc. 32.2	Courts must order presentence report in felony cases and may order such report in misdemeanor cases. The report shall state the defendant's prior criminal record.
Oklahoma	22-982	Requires presentence reports in non-capital felony cases, unless waived by both parties. The report must contain the defendant's criminal record.
	57-519	Authorizes courts to require the Division of Probation and Parole to prepare presentence reports in non-capital felony cases, which shall contain the defendant's criminal record.
Pennsylvania	42-9731, 9732	Requires presentence reports in felony cases, unless the sentence is death or a mandatory life term, if not waived by the court. The reports must contain the defendant's history of delinquency or criminality.
	42-9737	Requires sentencing courts to be informed as to the status of all criminal charges pending against the defendant and whether the defendant is on probation or parole.
Puerto Rico	33-3283	Presentence reports are mandatory in felony cases and discretionary in misdemeanor cases. Must contain the complete record of the defendant.
Rhode Island	12-19-6	Requires presentence reports in felony cases and requires all police agencies to furnish criminal record information for the report.
South Carolina	24-21-420	Presentence reports are discretionary with the court and must contain information about the defendant's criminal record.
South Dakota	23A-27-5	Requires presentence reports unless the defendant waives, with the court's consent, or the court finds the report to be unnecessary.
	23A-27-6	The presentence report shall contain the defendant's prior criminal record.
Tennessee	40-35-205	Presentence reports are required in felony cases and discretionary in other cases.
	40-35-207	Presentence reports must contain the defendant's record of prior convictions.
Texas	Code Crim. Proc. art.42.12 § 9(a)	Requires presentence reports in all cases unless the defendant waives, with the court's consent, or the court finds a report to be unnecessary. The report must contain the defendant's criminal history.
Utah	76-3-404	Presentence reports are discretionary with the court in felony cases. The reports must contain information about the defendant's prior criminal or delinquency records.

Table 7 (cont.)

Statutes authorizing presentence reports that shall or may include prior convictions
(Note: States which do not have statutes authorizing presentence reports that shall or may include prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Vermont	28-204(a)	Requires presentence reports in felony cases, unless the court has a recent report available, and makes reports discretionary in other cases. The report must contain the defendant's previous record.
	R. Crim. Proc. 32(c)	Provides that presentence reports shall contain the defendant's prior criminal record.
Virginia	19.2-299	Requires presentence reports in felony cases upon motion of defendant or request of court. Such reports must contain all available information relevant to the history of the accused.
Washington	9.94A.110	Makes presentence reports mandatory in felony sex cases and discretionary in other cases. The report must contain the defendant's criminal history.
West Virginia	62-12-7, 7a	Presentence reports are discretionary with the court and must include the defendant's criminal record.
Wyoming	7-13-303	Requires presentence reports in felony cases and makes them discretionary in misdemeanor cases before the court can grant probation or suspension of sentence. The report must contain the defendant's criminal history.
	R. Crim. Proc. 33(c)(2)	Requires presentence reports to include the defendant's prior criminal record.

Part III: Correctional Classifications

As in the case of sentencing, it can be assumed that correctional officials may (and do, when the information is available) properly consider an inmate's prior criminal history in making classification decisions for security and program assignment purposes, even in the absence of specific legal authority. Table 8 lists State statutory provisions that specifically require or authorize correctional officials to consider such information and, in some cases, provide for making the information available.

Florida's law is a good example. It provides that as soon as possible after a prisoner has been committed to the custody of the Department of Corrections, the classification board shall prepare a classification summary which shall include "the criminal, personal, social and environmental background and other relevant factors considered in classifying the prisoner for a penal environment best suited for his rapid rehabilitation." To facilitate preparation of this summary, another statutory provision requires that the officer delivering the prisoner to the Department shall also deliver, among other things, "any available presentence investigation reports." Alaska law directs the commissioner of public safety to establish programs to provide for the security and rehabilitation of prisoners and to assign prisoners to such programs based on, among other things, "the record of convictions of the prisoner." Arkansas law directs the Department of Corrections to establish a system for classifying prisoners "according to deportment," and to consider in implementing such classification system, the prisoner's "record prior to commitment to the Department of Corrections."

California law requires the Director of Corrections to classify prisoners for institutional assignment purposes based upon examination and study of all pertinent circumstances of the person's life, including "the antecedents of the violation of law because of which he or she has been committed to prison." Mississippi law requires the correctional classification committee to consider, among other things, "the complete record of the offender's criminal history." Nevada law requires correctional authorities to keep a record of each inmate which shall include "the offender's record of convictions." Nebraska has a similar provision requiring correctional authorities to maintain inmate files which must include prior criminal records.

Other States have specifically provided for making criminal history records available to correctional officials. For example, West Virginia has a statutory provision requiring that a copy of an offender's presentence report (which must include criminal history information) must be made available to the Department of Corrections together with a copy of any information or other document charging prior convictions for sentence enhancement purposes. Wyoming has a provision requiring the forwarding of presentence reports to correctional institutions and requiring the Division of Criminal Identification to make criminal history record information available to such officials. Laws in both Massachusetts and Missouri require the prosecuting attorney to furnish criminal history record information on sentenced individuals to the Departments of Corrections.

As noted earlier, it is likely that even in those States that have not enacted specific statutory authority, correctional officials use available information concerning inmates' prior criminal records in making correctional classification determinations. State law commonly gives broad authority to Departments of Corrections regarding the classification and assignment of prisoners and authorizes them to consider all relevant information in performing their duties. In this regard, presentence reports are often prepared by parole officials and are made available for correctional purposes as well as for sentencing purposes, under departmental rules if not by express statutory authority.

Table 8
**Statutes authorizing consideration of criminal history in
 correctional classification and supervision**

(Note: States which do not have statutes authorizing consideration of criminal history in correctional classification and supervision are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Alabama	15-22-25	Requires that the board of pardons and paroles shall make a complete investigation of each newly received prisoner and compile a report that must include the prisoner's criminal record.
Alaska	33.30.091	Requires commissioner of public safety to assign prisoners to programs based upon, among other things, the prisoner's record of convictions, with particular emphasis on convictions for sex crimes.
Arizona	13-701	Provides that the presentence report, which includes the offender's criminal history, must be forwarded to the Department of Corrections.
Arkansas	12-27-113(e)	Requires the director of the Department of Corrections to compile a complete record on each inmate including trial, conviction and past history.
	12-29-101	Requires the director of the Department of Corrections to establish a system for classifying prisoners according to deportment, taking into consideration their records prior to commitment.
California	Pen. Code § 5068	Requires the Director of Corrections to classify a prisoner for program assignment based upon all pertinent circumstances including "the antecedents of the violation of law because of which he or she has been committed."
Florida	921.20	Requires the classification board to compile a classification summary for each prisoner, including "criminal, personal, social and environmental background."
	944.17(5)	Requires the sheriff or other officer delivering an offender to the Department of Corrections to deliver any available presentence reports.
	944.1905	Requires the Department of Corrections to classify inmates pursuant to an objective classification scheme that takes into consideration the inmate's verified history involving intentional violence.
Georgia	42-8-291	Requires that presentence reports (including State and FBI criminal history sheets) shall be delivered with each offender to the Department of Corrections and the Board of Pardons and Paroles.
Hawaii	353-7	Authorizes establishment of a high security correctional facility for high risk inmates, including recidivists.
Idaho	20-224	Requires the Board of Corrections to establish a record on each inmate, including the inmate's previous criminal record.
Illinois	38-1003-8-1	Requires the sheriff delivering a prisoner to the Department of Corrections to deliver the presentence report which must include the inmate's criminal history.
Indiana	35-38-3-5	Requires classification of new inmates as to degree of security and candidacy for home detention based upon, among other things, prior criminal record.
Iowa	901.4	Requires presentence reports, with criminal history records, to be delivered to the Department of Corrections with inmates.

Table 8 (cont.)
**Statutes authorizing consideration of criminal history in
correctional classification and supervision**

(Note: States which do not have statutes authorizing consideration of criminal history in correctional classification and supervision are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Louisiana	Code Crim. Proc. art. 875, 876	Requires a presentence report (which includes offender's previous criminal record) to be sent to the division of probation and parole if the offender is committed. If an offender is committed and no presentence report has been compiled, the division must compile one within 60 days.
Maryland	27-691	Requires the Division of Correction to compile a case record for each inmate including previous criminal record and to classify inmates to training, treatment or employment programs on the basis of such case record.
Massachusetts	127-2	Requires the superintendents of correctional institutions to keep full and accurate records on inmates and gives such superintendents access to the State criminal record repository for such purposes.
	127-27	Requires the prosecutor of committed offenders to forward their criminal history records to the Department of Corrections.
Michigan	791.264	Requires the bureau of penal institutions to classify prisoners on the basis of files established by classification committees and requires clerks of court and probation officers to make criminal records available to the classification committees.
Mississippi	47-5-103	Requires classification committee to consider an inmate's criminal and juvenile history in determining work duties, living quarters, rehabilitation programs and privileges.
Missouri	217.305	Requires sheriff delivering a prisoner to the Department of Corrections to deliver prisoner's previous criminal record.
	217.345	Requires the Department of Corrections to establish treatment programs for first offenders.
Nebraska	83-178(1)(d), (2)	Requires the chief executive officer of each correctional facility to establish files for inmates to be used for classification, transfer, parole and other purposes. Each such file must contain the inmate's criminal history record.
Nevada	209.351(2)(d)	Requires the director of the Department of Corrections to establish a system of classification, based upon, among other things, the inmate's record of convictions.
	209.481	Makes eligibility for assignment to honor camp dependent upon, among other things, past criminal history.
New Jersey	30:4-141	Requires the board of managers to obtain and record information about each inmate's "past life," among other things.
	30:4-147	Authorizes inmates between the ages of 15 and 30 to be committed to the youth correctional complex if they have not previously been sentenced to prison.
New York	Cr. Proc. Law § 390.60	Requires copies of presentence reports (which include criminal histories) to be delivered with offenders committed to terms of imprisonment.
Ohio	2929.221	Provides that a person convicted of a third or fourth degree felony may serve the term of imprisonment in a county jail if offender has no prior felony conviction.
Rhode Island	12-19-2	Provides that certain first offenders may be sentenced to work release at a minimum security facility.

Table 8 (cont.)
**Statutes authorizing consideration of criminal history in
correctional classification and supervision**

(Note: States which do not have statutes authorizing consideration of criminal history in correctional classification and supervision are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Rhode Island (cont.)	42-56-20.2	Prohibits eligibility for community confinement if convicted or previously convicted of certain enumerated crimes.
South Carolina	24-13-710	Makes eligibility for supervised furlough dependent on, among other things, previous criminal convictions and sentences.
Texas	Govt. Code § 497.002	Requires the Department of Corrections to classify inmates on the basis of, among other things, criminal histories.
Utah	76-3-404	Requires the Department of Corrections to conduct presentence investigations and prepare reports that must include criminal histories.
Washington	9.94A.110	Requires that presentence reports, which include criminal history information, must accompany offenders committed to the Department of Corrections.
West Virginia	62-12-7, 7a	Requires that presentence reports, which include information on offenders' criminal histories, be delivered to the Department of Corrections.
Wisconsin	972.15(5)	Provides that the Department of Corrections may use presentence reports, which include criminal history information, for correctional classification and parole purposes.
Wyoming	7-13-104	Requires the State board of parole to keep complete records on all prisoners and requires the State criminal record repository to make records available for that purpose.
	7-13-303	Requires the presentence report, which includes criminal history record information, to be forwarded to the penal institution with committed offenders.

Part IV: Parole Eligibility

Table 9 lists State laws and constitutional provisions that require or permit consideration of an inmate's prior criminal history record in determinations regarding release on parole. It can be assumed that prior convictions would play an important part in a parole decision in any State, even in the absence of an express statutory provision. As is the case with all of the tables in this report, all of the statutory provisions listed in Table 9 expressly refer to criminal history record information. The laws specifically authorize parole boards or other correctional officials to consider prior criminal records in making release decisions or make parole eligibility dependent upon the inmate's prior criminal record.

As noted in the earlier analysis of sentencing statutes, numerous States have reformed their sentencing approaches in recent years to provide for determinate sentencing pursuant to sentencing guidelines or mandatory sentencing structures. Under this approach, the offender serves the sentence imposed, less good time credits: release on parole prior to the expiration of the sentence is no longer provided. For example, parole was abolished in the Federal penal system effective November 1, 1986, concurrent with the institution of the Federal Sentencing Guidelines.

Several States also have abolished parole for sentences imposed after the effective date of new determinate sentencing structures. In Washington, for example, parole has been abolished for sentences imposed after July 1, 1984. In New Mexico, parole remains applicable only to life sentences, and the parole board is required to consider the inmate's prior criminal record in making its release decision. Parole has been abolished in Minnesota in favor of determinate sentencing under sentencing guidelines. In Florida, parole is under legislative review as a result of the implementation of sentencing guidelines. The present parole statute has been repealed effective October 1, 1991. Presently, persons sentenced outside the sentencing guidelines are eligible for parole pursuant to parole criteria "designed to give primary weight to the seriousness of the offender's present criminal offense and his past criminal record."

Not all States that have reformed their sentencing structures have abolished parole. For example, Tennessee's new sentencing structure, which bases sentence lengths on the severity of the crime and classification of the offender as a mitigated, standard, multiple, persistent or career offender (based on the number and seriousness of prior offenses), also bases parole eligibility status on offender classification. In addition, the new law provides that a presentence report must be prepared and made available to the parole board for each offender sentenced to incarceration for one year or more.

In many of the States that have retained parole, statutory provisions make release eligibility dependent at least in part upon whether the offender has prior criminal offenses. For example, in Virginia, a first-time felon is eligible for parole after serving one-quarter of the sentence imposed or twelve years, whichever is shorter; a second-time felon is eligible after serving one-third of the term or thirteen years, whichever is shorter; a third-time felon is eligible after serving one-half of the term or fourteen years, whichever is shorter; and a person convicted of four or more felonies must serve three-fourths of the term imposed or fifteen years, whichever is shorter, before becoming eligible for parole.

Pennsylvania's statute requires the parole board to consider, among other things, the nature and character of the offense committed and the character and history of the prisoner. In this regard, the board is required to investigate each person committed to prison who is eligible for parole and to obtain, among other things, "the complete criminal record, as far as the same may be known."

Nevada law requires the parole board to establish and enforce parole release standards designed in part to "limit the release of persons with a history of repetitive criminal conduct." Arizona law makes the rate at which good time credits are earned dependent upon the existence and nature of prior convictions. Other provisions of Arizona law authorize the Department of Corrections director to consider an inmate's prior record in deciding whether to release on work furlough or to grant early parole because of prison crowding.

Many of the State laws that provide for enhanced sentences for repeat offenders or habitual offenders also prohibit or limit release of such offenders on parole. In addition, many States have other statutory provisions that prohibit or limit parole for certain offenders with specified prior convictions. For example, Virginia law prohibits parole for anyone convicted three or more times of enumerated serious felonies or enumerated drug offenses. West Virginia law provides that a person convicted for the third or subsequent time of a felony may not be paroled prior to serving the minimum term provided by law for the new offense and a person sentenced to life who has two or more prior felony convictions may not be paroled prior to serving 15 years. South Carolina law prohibits parole for persons convicted for the second or subsequent time of specified violent offenses. In Alabama, parole is prohibited for any person given a life sentence who has previously been convicted of a Class A felony or any person convicted of an enumerated serious felony who has been convicted of a felony resulting in serious injury within the previous five years.

Arizona prohibits parole for second or subsequent offenses of sexual assault against a spouse or sexual offenses against children, as well as for enumerated offenses committed while on release from confinement. Arizona, California and Maryland prohibit or limit parole for persons convicted of enumerated drug offenses who have prior convictions for such offenses. Hawaii and North Carolina have provisions prohibiting or limiting parole for enumerated repeat offenses involving deadly weapons. California and Oregon have provisions limiting or denying parole for persons convicted of murder who have prior murder convictions.

Table 9

Statutes providing that parole eligibility shall or may be affected by prior convictions

(Note: States which do not have statutes providing that parole eligibility shall or may be affected by prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Alabama	15-22-27.1	Person convicted of murder or a violent felony resulting in serious injury who has a conviction for a violent felony within previous five years is ineligible for parole.
	15-22-27.2	Person given life sentence for second class A felony is ineligible for parole.
Alaska	33.16.090, .100	Limits eligibility for discretionary parole for persons sentenced to enhanced terms as repeat offenders.
	33.16.110	Provides that the parole board shall consider the presentence report compiled for the sentencing court, including the prisoner's criminal and juvenile history and his previous experience on parole or probation.
Arizona	41-1604.07	Bases rates of earned release credits upon, among other things, prior criminal record.
	13-604	Limits parole eligibility [person must serve a designated number of years before becoming eligible for parole consideration] for dangerous and repetitive offenders, based upon the seriousness of the offense and the number and seriousness of prior offenses.
	13-604.01	Limits parole eligibility for persons convicted of dangerous crimes against children who have prior convictions for such offenses.
	13-604.02	Limits parole eligibility for persons convicted of felonies while on parole, probations or any other form of release.
	31-233.01	Provides that eligibility for release on work furlough shall depend on, among other things, the prisoner's prior criminal record.
	31-233(I)	Prohibits early release (because of overcrowding) of prisoners with prior felony convictions.
	13-1406.01	Limits parole eligibility for persons convicted for a second or subsequent time of sexual assault of a spouse.
Arkansas	16-93-601 thru 610	Establishes parole eligibility depending on date of offense, seriousness of offense and prior criminal record.
California	Pen. Code § 667.7	Limits parole eligibility for habitual offenders based upon number of prior prison terms served for enumerated serious offenses.
	Pen. Code § 667.75	Limits parole eligibility for persons convicted of enumerated drug offenses who have served prior prison terms for drug offenses.
	Pen. Code § 190.05	Provides for life sentence without parole for a person convicted of second degree murder who has served a prison term for murder.
	Pen. Code § 190.2	Provides for life without parole for a person convicted of first degree murder who has a prior conviction for murder.
Colorado	17-22.5-303.5	Establishes parole guidelines that set out aggravating circumstances affecting the length and conditions of parole, including whether the offender was on parole or probation when he committed the crime for which he was committed and the offender has numerous or increasingly serious adult or juvenile convictions.
Florida	947.002, .165	Provides for establishment of objective parole criteria for persons serving parole-eligible sentences based upon the offender's present criminal offense and his past criminal record.
Georgia	17-10-7	Prohibits parole for persons convicted of a felony for the fourth or subsequent time.

Table 9 (cont.)

Statutes providing that parole eligibility shall or may be affected by prior convictions

(Note: States which do not have statutes providing that parole eligibility shall or may be affected by prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Hawaii	706-669	Requires the state paroling authority to establish guidelines for determining minimum terms of imprisonment, taking into account the seriousness of the offense and the offender's prior criminal history.
	706-660.1	Provides for mandatory terms of imprisonment without parole for persons convicted of second or subsequent firearm felony offenses.
Idaho	20-223(b)	Provides that persons serving sentences for sex offenses who have a history of previous sex offenses shall be ineligible for parole.
Illinois	38-1003-3-4	Provides that parole board shall make its determination based upon, among other things, the presentence report (which contains information about the offender's criminal history).
	38-1005-5-3	Provides for sentencing certain offenders to terms of imprisonment without parole based upon prior criminal history.
Indiana	11-13-3-3	Provides that parole decisions shall be based in part upon inmates' past criminal histories.
Iowa	902.8	Habitual offenders not eligible for parole until minimum sentence is served.
	902.11	Person convicted of a forcible felony with a prior violent felony conviction or convicted of a nonforcible felony with a prior forcible felony conviction within previous five years is ineligible for parole until half of maximum sentence is served.
	906.5	Parole board to consider previous criminal history.
Kansas	22-3717(f)	Parole board to consider previous criminal history.
Kentucky	532.045	Prohibits parole for persons convicted of second or subsequent sex offense against a minor.
	439.340	Parole board required to obtain criminal history record of all parole-eligible offenders. Board shall consider previous criminal record in parole decisions.
Louisiana	15:574.4	Portion of sentence that convicted felon must serve before parole eligibility dependent upon numbers of previous felony convictions and whether previous sentence has been served. Parole board shall consider previous criminal record.
	Code Crim. Proc. art. 875, 876	Requires presentence report (with criminal history) to be sent to division of probation and parole with committed offender.
Maryland	27-286, -286D	Limits parole eligibility for persons convicted of repeat drug violations.
	27-643B	Provides for mandatory 25-year term with limited parole eligibility for person convicted of third crime of violence who has served at least one prior prison term for a crime of violence. Provides for life without parole for fourth conviction for a crime of violence.
Massachusetts	127-133B	Person convicted as habitual offender not eligible for parole until half of maximum term is served.
	94C-32H	Person convicted of repeat drug offenses not eligible for parole until mandatory minimum term is served.
Michigan	333.7413	Person convicted of drug trafficking for second or subsequent time sentenced to life without parole.

Table 9 (cont.)

Statutes providing that parole eligibility shall or may be affected by prior convictions

(Note: States which do not have statutes providing that parole eligibility shall or may be affected by prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Minnesota	243.05	Person sentenced to life for murder who has a previous felony conviction must serve 25 years before parole eligibility. Parole board may consider previous criminal histories in considering parole of parole-eligible inmates.
	609.184	Mandatory term of life without parole for person convicted of first degree murder who has one or more prior convictions for a heinous crime.
Mississippi	99-19-81	Maximum sentence without parole for persons sentenced as habitual criminals (felony conviction with two or more previous felony convictions and sentences).
	99-19-81	Life without parole for habitual criminals (as above) if one or more of the priors was a crime of violence.
	47-7-3	Persons convicted and sentenced as habitual criminals not eligible for parole.
	47-7-17	Parole board shall consider previous criminal record.
	47-7-19	Judges, prosecutors and police officers to furnish previous history information to the parole board.
Missouri	217.760	Board of probation and parole to make presentence investigation and report, including previous criminal history, before imposition of sentence or granting of probation or parole.
Montana	46-23-201, 202	Parole board shall consider previous criminal history.
Nebraska	83-1114(2)(j)	Board of parole shall consider previous criminal history.
Nevada	213.10987	Parole board shall adopt standards which shall, among other things, provide for longer terms for persons with history of repetitive criminal conduct.
New Jersey	30:4-123.54	Parole board shall compile report on eligible inmates, including pre-incarceration records.
	2C: 14-6	Persons convicted of second or subsequent sex offense not eligible for parole sooner than five years or fixed minimum sentence, whichever is longer.
New Mexico	31-21-10A	Parole board shall consider inmate's record and particularly whether he is an habitual offender.
New York	Cr. Proc. Law § 390.60	Presentence report, which includes information on previous criminal history, must be delivered to institutional authorities.
	Exec. Law § 259-a	Parole board shall prepare complete reports on inmates that must include presentence reports (which include criminal histories).
	Exec. Law § 259-c.3	Parole board shall have inmate records, including past criminal histories, ready for parole consideration.
North Carolina	14-2.1	Persons convicted of second felony with use of deadly weapon within seven-year period shall serve at least seven years before parole.
North Dakota	12-59-05	Parole board shall consider previous criminal history.
Ohio	2967.31	Eligibility for shock parole dependent in part upon prior criminal history.
Oklahoma	Const., art. 6 § 10	Establishes pardon and parole board. Grants legislature the authority to prescribe minimum mandatory terms without parole for person convicted of felonies for the third time.

Table 9 (cont.)**Statutes providing that parole eligibility shall or may be affected by prior convictions**
(Note: States which do not have statutes providing that parole eligibility shall or may be affected by prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Oregon	144.120	Parole board may choose not to parole person whose present offense was preceded by two or more class A or B felonies.
	163.095	Persons convicted for second time of murder shall be sentenced to life without parole.
Pennsylvania	61-331.19	Parole board shall obtain and consider inmate's complete criminal history as far as known.
Puerto Rico	4-1503	Parole board shall consider information about prior criminal background.
Rhode Island	13-8-13	Persons serving life sentences convicted of escape shall serve 25 years without parole and each subsequent escape conviction shall add five years without parole.
	13-8-14.1	Parole board may vary from established parole standards based upon inmate's prior criminal record.
South Carolina	17-25-45	Persons convicted of third crime of violence sentenced to life without parole.
	24-21-640	Parole prohibited for persons serving second or subsequent sentence for a violent crime.
South Dakota	24-13-7	Parole board may consider the inmate's prior criminal history in granting or denying parole.
Tennessee	40-35-203	Presentence report (including criminal history information) must be submitted to department of corrections and parole board for all offenders sentenced to a year or more.
Texas	Code Crim. Proc. art. 42.18 § 8(e)	Pardon and parole board must compile and consider inmates' prior criminal histories.
Vermont	13-2311	Person who is convicted of murder and has a prior murder conviction shall be sentenced to life without parole.
	28-501(c)	Parole board shall obtain and consider inmates' prior criminal histories.
Virginia	53.1-151	Repeat felony offenders required to serve increasing portions of sentences before parole, depending on number of prior felony convictions, up to three-fourths of sentence for fourth or subsequent conviction. Persons sentenced to two or more life sentences, not eligible for parole before serving 20 years. Persons convicted for third felony drug trafficking offense are ineligible for parole. Persons convicted for third violent felony are ineligible for parole.
Washington	9.95.009	Parole abolished for crimes committed after July 1, 1984.
West Virginia	62-12-7	Parole board shall obtain and consider inmates' prior criminal histories.
	62-12-13	Person sentenced for third or subsequent felony conviction must serve minimum sentence before parole. Person sentenced to life who has two or more prior felony convictions must serve 15 years before parole. Parole board must obtain authentic copy of prisoner's State or Federal criminal history record.
Wisconsin	972.15(5)	Presentence report, which includes criminal history information, may be used for parole considerations.

Table 9 (cont.)

Statutes providing that parole eligibility shall or may be affected by prior convictions
(Note: States which do not have statutes providing that parole eligibility shall or may be affected by prior convictions are omitted from the table.)

State	Citation	Statutory provision <i>(Statutory provisions are summarized or paraphrased.)</i>
Wyoming	7-13-104	Board of parole shall obtain information on inmates from the division of criminal investigation.
	7-13-402	Prisoner is not eligible for parole if he has previously escaped or helped others to escape.

Part V: Possession of Firearms by Convicted Felons

A provision of Federal law, 18 U.S.C. § 922(g), makes it unlawful for any person who has been convicted of a felony⁵ in any Federal or State court to possess, transport or receive any firearm or ammunition which has been shipped or transported in interstate commerce. In addition to the Federal provision, 43 States, the District of Columbia and the Virgin Islands have provisions in their penal codes making it a criminal offense, usually a felony, for a person previously convicted of a felony to own, possess or carry a firearm. (See Table 10.) Some of these laws apply to only certain types of firearms (such as handguns), some apply to other types of deadly weapons as well, and some apply only if the weapon is concealed or concealable. Virtually all of the laws outlaw possession or ownership of firearms or other designated weapons by persons convicted of designated criminal offenses in any State or Federal court and, in some cases, in the territories or in other countries as well.

As an example, California law makes it a felony for a person to possess any type of firearm if the person has previously been convicted of a felony or a designated violent offense under California law, Federal law or the laws of "any other state, government or country." Arizona law makes it a criminal offense for any person to possess a firearm or other weapon designed for lethal use if such

person previously has been convicted "within or without this state" of a felony involving violence or possession or use of a deadly weapon. Florida law makes ownership or possession of a firearm a felony offense if the owner or possessor has been convicted of a felony in the courts of Florida, the United States, "or any other state, territory or country."

Alaska law, on the other hand, applies only to firearms capable of being concealed on the person. It makes possession of such a firearm a felony if the person has previously been convicted of a felony by a Federal court, a court of Alaska or a court of "another state or territory." In Kansas, it is a felony for a person to possess a firearm with a barrel less than 12 inches long if the person has previously been convicted of a felony under the laws of Kansas or any other jurisdiction. Illinois law, as a final example, makes it a criminal offense for a person to possess any firearm or ammunition if previously convicted of a felony under the laws of the State of Illinois.

Although varying somewhat in scope, all of these laws and the others listed in Table 10 have one thing in common. They require, for effective enforcement, that law enforcement officials have some means of quickly determining whether persons they encounter who have firearms or other prohibited weapons in their possession have previous felony convictions in the state or in other jurisdictions. In some cases, the persons may be known to law enforcement officials as convicted felons. In other cases, the persons

may be subject to arrest for other offenses,⁶ thereby providing law enforcement officials with sufficient time to determine whether the persons have prior felony convictions. In many cases, however, law enforcement officials have no effective means of immediately obtaining sufficient information about a suspect's past criminal involvement to be able to determine whether the person has a prior felony record, particularly if the conviction occurred in another State. Access to on-line computerized criminal history systems, including the interstate system operated by the FBI, may provide the necessary information in some cases. In many cases, however, because information in the databases is incomplete, the available information does not include court and correctional dispositions or does not include sufficient information to determine with certainty whether recorded convictions were for felony offenses. In addition, since access to the information is limited to name searches, the use of false names can cause existing records to be missed.

⁵A felony is defined as a crime punishable by imprisonment for a term exceeding one year.

⁶Some of the states listed in Table 10 have firearms licensing laws which generally make it a criminal offense to possess a firearm without a license. Persons with prior felony convictions usually are not eligible to obtain firearms licenses.

Table 10
Statutes making possession of a firearm by a convicted felon a criminal offense

State	Citation	Prohibited weapons*	If previously convicted of	Penalty (or offense level)
United States	18-922(g), 924	Firearm or ammunition shipped in interstate commerce	Any felony**	Up to 10 years or \$5,000 fine, or both
Alabama	13A-11-72, 84	Pistols	Crime of violence or attempt	Up to five years
Alaska	11.61.200	Concealable firearm	Any felony within five years***	Class C felony
Arizona	13-3101, 3102	Firearm or lethal weapon	Violent felony or possession of deadly weapon	Class 6 felony
Arkansas	5-73-103	Firearm	Any felony	Class D felony
California	P. C. § 12021	Firearm	Any felony	Felony
	P. C. § 12560	Firearm	Felony with firearm	Up to \$1,000 fine or one year, or both
Colorado	18-12-108	Firearm or deadly weapon	Burglary, arson or felony involving violence or deadly weapon within 10 years	Class 5 felony; second or subsequent offense is class 4 felony
Connecticut	53a-217	Handgun or electric stun gun	Capital felony or other serious felony	Class D felony (must serve two years)
Delaware	11-1448	Deadly weapon	Felony, crime of violence or certain drug offenses.	Class E felony
District of Columbia	22-3203, 22-3215	Pistol	Felony, pandering, bawdy house or vagrancy	Up to \$1,000 fine or one year, or both.
Florida	790.23	Firearm or electric stun gun	Felony	Second degree felony
Hawaii	134-7(b), (f)	Firearm or ammunition	Crime of violence or drug trafficking	Class B felony
Illinois	38-24-1.1	Firearm, ammunition or other dangerous weapon	Any felony	Class 3 felony
Iowa	724.26	Firearm or offensive weapon	Any felony	Aggravated misdemeanor
Kansas	21.4204	Firearm with barrel under 12"	Any felony within five years	Class D felony
Kentucky	527.040	Handgun	Any felony	Class D felony
Louisiana	14:95.1	Firearm	Enumerated serious felonies within 10 years	\$3,000-5,000 fine and three to 10 years without probation or parole
Maine	15-393	Firearm	Felony or any offense with dangerous weapon or firearm	Class C crime

* The statutes uniformly criminalize owning or possessing specified, prohibited weapons. Some statutes also prohibit buying, concealing, transporting, carrying or using or intending to use such weapons.

** The Federal law defines "felony" as a crime punishable by imprisonment for more than one year.

*** The statutes that apply only to crimes committed within specified time periods prior to the new offense usually calculate the time from the date of the earlier crime or the date of release from supervision resulting from any sentence imposed for the earlier crime, whichever is later.

Table 10 (cont.)
Statutes making possession of a firearm by a convicted felon a criminal offense

State	Citation	Prohibited weapons*	If previously convicted of	Penalty (or offense level)
Maryland	Art. 27 § 445(c)	Handgun	Crime of violence, weapon violation or drug violation	Misdemeanor. Up to \$5,000 fine or three years, or both
	Art. 27-374, 375	Machine gun	Crime of violence	Felony. Up to 10 years
Minnesota	624.713	Pistol	Crime of violence within 10 years or drug offense	Felony
Mississippi	97-37-5	Deadly weapon	Felony	Felony. One to five years
Missouri	571.070	Concealable firearm	Dangerous felony within five years	Class C felony
Montana	45-8-316	Deadly weapon	Any felony	\$1,000 fine or up to five years, or both
Nebraska	28-1206	Firearm with barrel under 18" or brass knuckles	Any felony	Class IV felony
Nevada	202.360	Firearm	Any felony	\$5,000 fine and one to six years
	202.380	Tear gas bomb or weapon	Felony drug offense or other enumerated serious felonies	Felony
New Hampshire	159:3	Firearm or dangerous weapon	Any felony	Class B felony
New Jersey	2C:39-7	Firearm or other lethal weapon	Enumerated serious offenses or drug offense	Fourth degree crime
New Mexico	30-7-16	Firearm	Any felony within 10 years	Misdemeanor
New York	Pen. Law § 265.01	Rifle or shotgun	Felony or serious offense	Class A misdemeanor
	Pen. Law § 265.02	Firearm	Felony or class A misdemeanor within five years	Class D felony
North Carolina	14-415.1	Handgun or firearm with barrel under 18" or overall length under 26" or any weapon of mass death and destruction	Enumerated felonies and serious offenses within five years	Class 1 felony
North Dakota	62.1-02-01	Firearm	Violent felony within 10 years or any other felony or misdemeanor involving violence or use of firearm or dangerous weapon within five years	Class C felony
Ohio	2923.13	Firearm or dangerous ordnance	Violent felony or drug offense	Fourth degree felony
Oklahoma	21-1283, 84	Concealable firearm	Any felony	Felony

Table 10 (cont.)
Statutes making possession of a firearm by a convicted felon a criminal offense

State	Citation	Prohibited weapons*	If previously convicted of	Penalty (or offense level)
Oregon	166.270	Firearm or enumerated dangerous weapons	Felony involving firearm or switchblade knife within 15 years	Class C felony
Pennsylvania	18-5105, 6119	Firearm	Crime of violence	First degree misdemeanor
Rhode Island	11-47-5	Firearm	Crime of violence	Two to 10 years without probation
South Carolina	16-23-30, 50	Pistol	Crime of violence	Felony
Tennessee	39-17-1307	Firearm, club, knife with blade over 4"	Violent felony or felony with deadly weapon within five years	Class E felony
Texas	Pen. Code § 46.05	Firearm	Violent felony	Third degree felony
Utah	76-10-503	Firearm or dangerous weapon	Crime of violence	Felony (level depends on circumstances)
Virgin Islands	14-2253(a)	Firearm	Felony	Up to 15 years and \$12,000 fine depending on type of weapon
Virginia	18.2-308.2	Firearm or enumerated dangerous weapons	Felony	Class 6 felony
Washington	9.41.040	Pistol or firearm with barrel under 12"	Violent crime, felony with firearm or felony drug offense	Class C felony
West Virginia	61-7-7	Firearm or other deadly weapon	Felony	Misdemeanor. 90 days to a year or fine or both
Wisconsin	941.29	Firearm	Felony	Class E felony
Wyoming	6-8-102	Firearm	Violent felony or attempt	Felony

Part VI: Criminal History Record Databases

At present, every State has a central criminal history record repository that is charged by law and implementing regulations⁷ with the responsibility of maintaining complete and accurate information on criminal justice transactions in the state and making such information available to criminal justice agencies in the state as needed for official criminal justice purposes (as well as for authorized non-criminal justice purposes,⁸ which are outside of the scope of this report). Transactions typically reported to and maintained by the repositories include arrests for so-called "fingerprintable offenses" (felonies and serious misdemeanors); decisions by police officials to release arrested persons without charging them; decisions by prosecutors not to prosecute arrested persons; charges brought or dismissed by grand juries; dismissals, acquittals, convictions and other trial and appellate court dispositions; admission to and release from local jails, detention centers or State correctional facilities; and admission to and release from probation or parole supervision. In

addition, the repositories maintain files of fingerprints submitted by police agencies to provide positive identification of all of the subjects in their files. Law enforcement and criminal justice agencies throughout the country use computer terminals or other telecommunications devices to inquire of their repositories whether a record exists for a named individual. If a record does exist, full or summary criminal history information can be provided by the repository to the agency by terminal or by mail.

Criminal history records of persons arrested for Federal offenses are maintained by the FBI's Identification Division. The FBI also maintains records of State offenders compiled from arrest fingerprint cards and court disposition information voluntarily submitted to the Bureau by State and local law enforcement agencies throughout the country. These files, which to some extent duplicate the files maintained by the State repositories, are available to criminal justice agencies nationwide by means of two telecommunications networks: the National Law Enforcement Telecommunications System (NLETS), operated by the participating States, and the National

Crime Information Center (NCIC) network maintained by the FBI. The NCIC network links criminal justice agencies with the Interstate Identification Index, a master name index of subjects whose records are maintained in automated form by the States and/or the FBI. Access to the FBI's files and to other States' files by means of these networks permits criminal justice agencies to determine whether particular individuals have other State or Federal records, and provides a means of obtaining such records as necessary.

Numerous studies, particularly a 1989 study commissioned by the Attorney General of the United States,⁹ have found that the utility of many of these Federal and State databases is seriously compromised for many criminal justice purposes by the fact that they are not always accurate and complete, nor fully automated and thus not always quickly accessible. Only 10 of the State repositories have automated all of their criminal history records.¹⁰ Most of the others have automated a large portion of the records of the most active offenders in their files; commonly those are of younger offenders in their most crime-prone years and offenders who have been arrested or upon whom an inquiry has been received in recent years. A few States have automated few or no

⁷ See U.S., Department of Justice, Bureau of Justice Statistics, *Compendium of State Privacy and Security Legislation, 1989 Overview*, prepared by SEARCH Group, Inc., (Washington D.C.: Government Printing Office, April 1990).

⁸ See "A Study to Identify Criminal Justice Information Law, Policy and Management Practices Needed to Accommodate Access to and Use of III for Noncriminal Justice Purposes," unpublished report prepared for the FBI by SEARCH Group, Inc., September 1984.

⁹ U.S., Department of Justice, *Task Force on Felon Identification in Firearm Sales, Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms*, Richard B. Abell, Assistant Attorney General, Office of Justice Programs, Task Force Chair, (Washington D.C.: Government Printing Office, October 1989) (hereafter *Task Force Report*).

¹⁰ *Criminal Justice Information Policy: Survey of Criminal History Information Systems*, Bureau of Justice Statistics, U.S. Department of Justice, March 1991, p. 11.

records. About half of the criminal history records in the FBI's files are automated, but this includes all persons arrested for the first time for a fingerprintable offense (a felony or a serious misdemeanor) after July 1, 1974.¹¹

Thirty-nine of the State repositories have fully automated name indexes to all of their criminal history records, even though some of the records themselves are maintained in manual form. Of the remaining states, all except Mississippi and West Virginia have automated at least a portion of their master name indexes, even though most, or in some cases all, of the records themselves are manual.¹² The FBI has an automated name index to its automated criminal history records which is available to law enforcement agencies nationwide.¹³

Even where name indexes and full records are automated, the use of false names by arrested persons frequently causes automated name searches to fail to discover existing records on such persons. Although these prior records are later discovered in most cases — when the arrest fingerprint cards submitted to the repositories and to the FBI are processed and searched against master fingerprint files — the information may not be returned to arresting agencies and other criminal justice agencies in time for making initial bail decisions and determining whether arrested persons have prior felony convictions that affect initial charging decisions under offense-upgrade laws and recidivist sentencing laws.

By far the most serious deficiency in many of these databases, however, is their lack of completeness. At least half of the arrest records in the FBI's files do not show final dispositions, and studies have shown that lack of disposition data is a problem, usually a serious problem, in a number of States.¹⁴ Further, although arrest reporting by law enforcement agencies is generally acknowledged to be considerably better than disposition reporting by courts and other criminal justice agencies, surveys and audits have shown that law enforcement agencies do not submit fingerprints and arrest data to the repositories for all reportable arrests and that under-reporting of arrests is a significant problem in some states.¹⁵

In most States, the burden of seeking increased arrest and disposition reporting by criminal justice agencies is borne principally by the repositories. Even though many States have mandatory reporting laws, most such laws do not provide for sanctions, which, in any case, are difficult or impossible to enforce. In trying to persuade criminal justice agencies to

voluntarily increase reporting levels, repository officials and others often are hampered by the fact that many agencies consider the repository's records to be of limited use because they are incomplete. Because of this perceived lack of utility (resulting mostly from poor reporting), user agency personnel often are reluctant to invest the additional effort necessary to increase reporting levels to the point that the records become more clearly valuable.

Since law enforcement agencies are the heaviest users of criminal history records and are more apt to be aware of their value, efforts to raise arrest reporting levels generally have been more successful than efforts to increase disposition reporting by prosecutors, courts and correctional institutions. Even though courts depend heavily upon criminal history information for bailsetting and sentencing purposes, as demonstrated by the statutes cited in this report, the information usually is compiled by other agencies, such as bail, probation or corrections agencies, and made available to the courts in bail recommendation reports and presentence reports. The extraordinary amount of time and effort expended by those agencies in contacting other agencies to obtain missing information and to verify information that appears to be erroneous or inconsistent may not be recognized by the ultimate users of the information. Consequently, it is often difficult to obtain a commitment for the additional time and effort necessary to improve disposition reporting which can pay dividends in the long run.

¹⁴ Task Force Report, op. cit., n. 9, pp. 10-11. See also U.S., Department of Justice, "State Criminal Record Repositories," Bureau of Justice Statistics Technical Report prepared by SEARCH Group, Inc., (Washington, D.C.: Government Printing Office, October 1985), and U.S., Department of Justice, Survey of Criminal History Record Systems, note 10.

¹⁵ U.S., Department of Justice, Bureau of Justice Statistics, Data Quality of Criminal History Records, Criminal Justice Information Policy Series, prepared by Robert R. Belair, SEARCH Group, Inc. (Washington, D.C.: Government Printing Office, October 1985) pp. 24-26; See also Illinois Criminal Justice Information Authority, "Audit of Chicago Police Department," Audit of Illinois' Repositories for Criminal History Record Information, Annual Audit for 1989, March 15, 1990, draft, pp. 151-153.

¹¹ U.S., Department of Justice, Task Force Report, note 9, p. 9.

¹² U.S., Department of Justice, Survey of Criminal History Information Systems, note 10.

¹³ U.S., Department of Justice, Task Force Report, note 9, p. 8.

Although incompleteness is unquestionably the most serious data quality problem affecting criminal history databases, inaccuracy is also a problem in many jurisdictions.¹⁶ Information that is inaccurate or ambiguous can adversely affect criminal justice decisionmaking as surely as can missing information. Studies and audits have shown that error levels can be reduced by automating reporting and data entry processes, since automated systems can use a broad range of edit and validation programs that prevent the entry of inconsistent or apparently erroneous information.¹⁷ Automating reporting processes also has been shown to significantly increase the incidence as well as the accuracy of disposition reporting by courts.¹⁸ In addition, the accuracy and clarity of criminal history records can be increased by using unique tracking numbers and other data-linking techniques to ensure that disposition information is linked to the proper case cycles and matched to the correct charges.

These and other data quality strategies that have been demonstrated to be effective are described in other publications.¹⁹ It is not the purpose of this report to describe them in any detail, but merely to note that numerous states have demonstrated that data quality levels can be significantly improved if 1) the will to do so can be instilled in the agencies that must report information to the repositories and 2) if needed equipment and other resources are made available. If that occurs, the existing interdependent criminal history databases and the telecommunications networks that link them to criminal justice practitioners can provide the information necessary to fully implement the crime control strategies reflected in the hundreds of Federal and State statutes compiled in this report. In the meantime, the lack of complete, accurate and timely criminal history record data seriously undermines the effective enforcement of many of these statutes.

¹⁶ U.S., Department of Justice, *Data Quality of Criminal History Records*, note 9, pp. 27-29.

¹⁷ Ibid., p.62.

¹⁸ SEARCH Group, Inc., "Audit of the Completeness and Accuracy of Criminal History Record Information Maintained by the Maryland Criminal Justice Information System," Feb. 9, 1990, pp. X-11-17.

¹⁹ See U.S., Department of Justice, Bureau of Justice Statistics, *Strategies for Improving Data Quality*, Criminal Justice Information Policy Series, prepared by Paul Woodard for SEARCH Group, Inc., (Washington, D.C.: Government Printing Office, April 1989) and U.S., Department of Justice, Bureau of Justice Statistics, *Data Quality Policies and Procedures, Proceedings of a BJS/SEARCH Conference*, (Washington, D.C.: Government Printing Office, November 1986).

APPENDIX

LIST OF OFFICIAL CODE COMPILATIONS TO WHICH CITATIONS REFER

United States Code Annotated	Montana Code Annotated
Code of Alabama	Revised Statutes of Nebraska
Alaska Statutes	Nevada Revised Statutes
Arizona Revised Statutes Annotated	New Hampshire Revised Statutes Annotated
Arkansas Statutes Annotated	New Jersey Statutes Annotated
Deering's Annotated California Code	New Mexico Statutes Annotated
Colorado Revised Statutes	McKinney's Consolidated Laws of New York Annotated
Connecticut General Statutes Annotated (West)	General Statutes of North Carolina
Delaware Code Annotated	North Dakota Century Code
District of Columbia Code Annotated (1981)	Ohio Revised Code Annotated
Florida Statutes Annotated (West)	Oklahoma Statutes Annotated (West)
Official Code of Georgia Annotated (Michie)	Oregon Revised Statutes
Hawaii Revised Statutes	Purdon's Pennsylvania Statutes Annotated
Idaho Code	Puerto Rico Laws Annotated
Illinois Annotated Statutes (Smith-Hurd)	General Laws of Rhode Island
Indiana Statutes Annotated Code Edition (Burns)	Code of Laws of South Carolina 1976
Iowa Code Annotated (West)	South Dakota Codified Laws Annotated
Kansas Statutes Annotated	Tennessee Code Annotated
Kentucky Revised Statutes and Rules Service (Baldwin)	Texas Codes Annotated (Vernon)
Louisiana Revised Statutes Annotated (West)	Utah Code Annotated
Maine Revised Statutes Annotated	Vermont Statutes Annotated
Annotated Code of Maryland	Code of Virginia Annotated
Massachusetts General Laws Annotated (West)	Virgin Islands Code Annotated
Michigan Compiled Laws Annotated (West)	Revised Code of Washington Annotated
Minnesota Statutes Annotated (West)	West Virginia Code
Mississippi Code Annotated	Wisconsin Statutes Annotated (West)
Vernon's Annotated Missouri Statutes	Wyoming Statutes

Please put me on the mailing list for—

- Law enforcement reports**—national data on State and local police and sheriffs' departments: operations, equipment, personnel, salaries, spending, policies, programs
- Federal statistics**—data describing Federal case processing, from investigation through prosecution, adjudication, and corrections
- Drugs and crime data**—sentencing and time served by drug offenders, drug use at time of crime by jail inmates and State prisoners, and other quality data on drugs, crime, and law enforcement
- Justice expenditure and employment reports**—annual spending and staffing by Federal/State/local governments and by function (police, courts, etc.)

- White-collar crime**—data on the processing of Federal white-collar crime cases
- Privacy and security of criminal history information and information policy**—new legislation; maintaining and releasing intelligence and investigative records; data quality issues
- Juvenile corrections reports**—juveniles in custody in public and private detention and correctional facilities
- BJS bulletins and special reports**—timely reports of the most current justice data
- Prosecution and adjudication in State courts**—case processing from prosecution through court disposition, State felony laws, felony sentencing, criminal defense
- Corrections reports**—results of sample surveys and censuses of jails, prisons, parole, probation, and other corrections data
- National Crime Survey reports**—the only regular national survey of crime victims
- Sourcebook of Criminal Justice Statistics** (annual)—broad-based data from 150+ sources (400+ tables, 100+ figures, subject index, annotated bibliography, addresses of sources)
- Send me a form to sign up for **NCJ Reports** (free 6 times a year), which abstracts both private and government criminal justice publications and lists upcoming conferences and training sessions in the field.

To be added to any BJS **mailing list**, please copy or cut out this page, fill in, fold, stamp, and mail to the Justice Statistics Clearinghouse/NCJRS.

You will receive an annual renewal card. If you do not return it, we must drop you from the mailing list.

To order copies of **recent BJS reports**, check here and circle items you want to receive on other side of this sheet.

Name:

Title:

Organization:

Street or box:

City, State, Zip:

Daytime phone number: ()

Criminal justice interest:

Put your organization and title here if you used home address above:

FOLD, SEAL WITH TAPE, AND STAMP

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics
Washington, D.C. 20531

Place
1st-class
stamp
here

Justice Statistics Clearinghouse/NCJRS
U.S. Department of Justice
Box 6000
Rockville, MD 20850

Now you can receive BJS press releases and other current data from the NCJRS Electronic Bulletin Board!

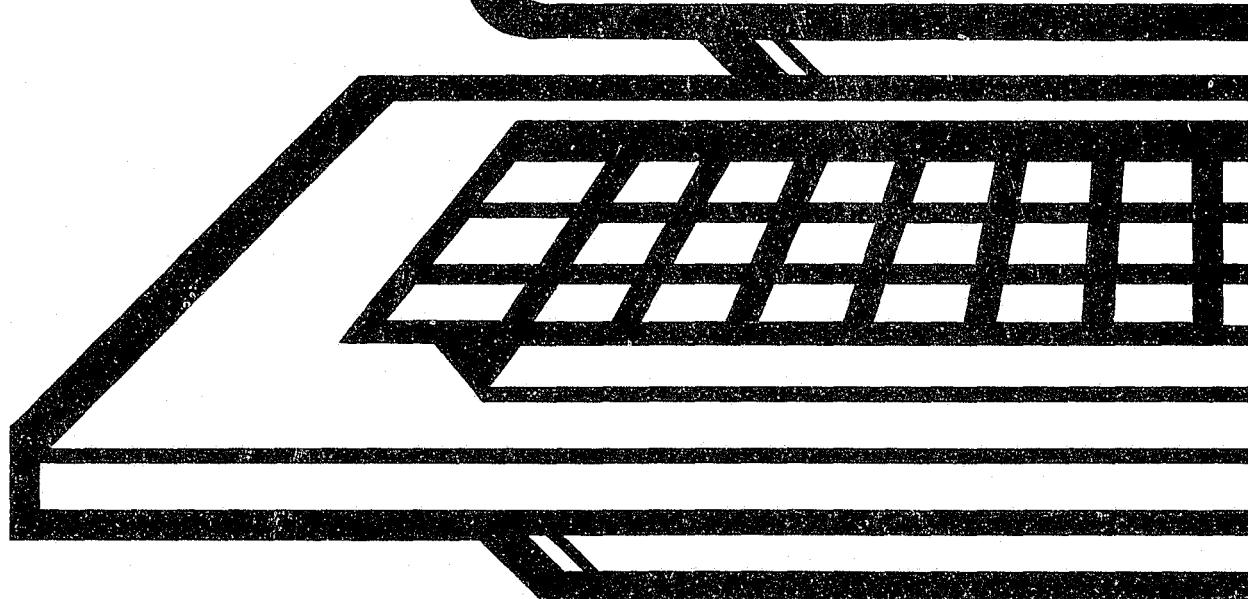
The Electronic Bulletin Board provides quick and easy access to new information—use your personal computer and modem, set at 8-N-1 (rates 300 to 2400 baud), and call 301-738-8895, 24 hours a day.

Once online, you will be able to review current news and announcements from BJS and its Justice Statistics Clearinghouse, including new publication listings and conference calendars.

For more information about the Bulletin Board, call 1-800-732-3277.

BJS menu options

- 1. BJS press releases**
- 2. Latest BJS findings**
- 3. Justice Statistics Clearing-house information**
- 4. BJS conference activity**
- 5. News from the Drugs & Crime Data Center & Clearinghouse**
- 6. National Archive of Criminal Justice Data**
- 7. News from State Statistical Analysis Centers**



U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Official Business
Penalty for Private Use \$300

BULK RATE
POSTAGE & FEES PAID
DOJ/BJS
Permit No. G-91

Washington, D.C. 20531