Criminal Punishment 7

Learning Objectives

After reading this chapter, you should be able to:

- Explain the history of criminal punishment
- Explain how criminal punishment has changed over time
- List and explain the goals of criminal punishment
- List and explain the different sentencing processes
- Discuss the debate about capital punishment

Chapter Outline

Intermediate Sentencing

7.1 The Enforcement of Social Rules

Life is full of rules. Rules dictate which side of the road we drive on, how fast we can drive, which lanes we can drive in, what we must do when an emergency vehicle com into view, and now, even when and how we can use a cell phone while driving. Professors bar cheating and plagiarism. Employers publish entire manuals containing workpla rules. And each year states and the federal government pass even more laws. In 2011, for example, the state of California welcomed 725 new laws governing everything fron what insurance companies can charge men and women to the banning of trans fat. Today there are so many laws on the books of states, counties, cities, and the federal government that nobody can say precisely how many laws exist in the United States. By best estimates, however, there are over 4,000 federal laws alone. For example (from **www.dumblaws.com (http://www.dumblaws.com)**),

- In Eureka, CA: It shall be unlawful to throw or hit or knock any baseball with a ball bat or any other instrument or engage in or play the game of baseball in any other manner on any city park or playground without first obtaining written permission to do so from the Director of Public Works. The Director of Public Works is hereby authorized and empowered to specify the conditions under which the game of baseball may be engaged in or played at any city park or playground. For the purposes of this section, the term "baseball" shall mean any ball having a circumference of less than 11 inches or a weight of less than six ounces and which is commonly used in th game known as baseball ('63 Code, 11-6.04) (Ord. 109-C.S., passed 9-6-68; Am. Ord. 375-C.S., passed 10-19-82).
- In El Paso, TX: 10.16.090 Public indecency—Accosting females—Appearing in disguise. No person shall exhibit or expose himself naked, or disguised, or in any indec or offensive manner to any person passing in the public places of the city, or to persons living in the neighborhood, or rudely, insultingly or offensively accost any fema or appear in the streets or public places in any indecent or lewd dress, or relieve the calls of nature in any place exposed to the public sight or gaze or upon any public street or plaza. (Prior code 15-10)

And in San Francisco, the board of supervisors passed a law cracking down on McDonald's "Happy Meals." The law was originally put in place as an attempt to stop the growing prevalence of childhood obesity and other health-related issues. The law stipulates,

- A restaurant may combine a free toy or Incentive Item with the purchase of a meal if the meal does not include any of the following as defined in the ordinance: excess calories, excessive sodium, excessive fat including saturated fat, and trans fat exceeding 0.5 grams. A meal must also contain at least 0.5 cups or more of fruits or vegetables. Breakfast items must contain 0.5 cups of fruits or vegetables. A Restaurant may provide a free toy or Incentive Item in combination with the purchase of a single food item or beverage if the food or beverage includes less than 35% of total calories from fat and less than 10% of calories from added caloric sweeteners.

Laws place limits on individuals and companies, and they provide for punishment if the law is violated. Every law written provides the state with some form of sanction opti Individuals found guilty of misdemeanors or low-level felonies, for example, may be placed on probation, house arrest, or required to pay restitution and perform community service. Other offenders may be forcibly placed in institutions where their liberties are restricted. A few may also be executed. While we can debate whether the United State has too many laws or too few and whether these laws are prudent, wise, or necessary, the real question is how the United States became a nation of laws. How did we becon nation not only of laws, but also one where *sanctions for violating the law are also limited by law*? In the United States and most other industrialized countries, strong legal limits guide what our society can do to even the worst criminal offenders. Indeed, it is not uncommon for people to complain that the criminal justice system is too lenient o offenders, capital punishment should be used more frequently, and criminals should be treated more harshly. Books written by criminologists also argue for bringing back physical punishment of offenders (Newman, 1995) and giving offenders a choice between imprisonment and flogging (Moskos, 2011).

To understand why our system of justice places limits on what we can do to criminal offenders, we have to understand the history of criminal punishment. When we do, two themes emerge: First, societies require rules and laws that are perceived to be just and fair. Because societies need rules, they also need mechanisms for enforcing those rules These mechanisms have to balance out a variety of interests, including the desire of the state for social order and public protection and the desire of the victim for revenge o retribution. We will discuss why shortly. Second, historically speaking, we have tried virtually every idea to punish and to rehabilitate offenders. Indeed, the history of crimin punishment is one that includes extraordinary brutality and sometimes leniency and mercy. More importantly, however, our history of punishing criminals has evolved over ti as our views of morality have changed and our priorities have shifted. In many ways, our system of criminal punishment emerged from prolonged periods of trial and error a our experiences in trying to meet the various goals of punishment while retaining an emphasis on individual rights and freedoms.

A Brief History of Criminal Punishment

The ability of groups of people to live and work together requires trust. Trust forms the bedrock for almost all social interactions. We have to trust that others will not break our homes and steal our possessions, not pull a gun on us and demand our money, and not harm our children. When this trust is violated, it is not uncommon for individuals feel betrayed, taken advantage of, manipulated, lied to, and even cheated. In many ways, criminal behavior often represents both cheating and a betrayal of trust. It is becaus this that all groups of people have had to establish rules for interaction. Of course rules are meaningless absent some form of punishment for those who violate the rules. In s tribes, for example, the consequences of the violation of rules against theft can mean death to the victims, who could find themselves without food. In the old West, stealing horse could result in hanging, not because people loved horses but because the victim might not be able to survive such a loss. In modern societies, the consequences are usu not as serious, but crime still brings harm to victims, still destabilizes communities, and still requires some type of official reaction.

Historically speaking, our system of justice—with its due process protections, its application of constitutional rights to those accused of a crime, the requirements for evidenc and its use of a jury to determine guilt—is relatively new. Ancient texts, for example, tell of blood feuds that erupted when individuals stole from people, murdered them, or otherwise brought harm to others. Loved ones, families, and friends would seek vengeance and sometimes kill or steal from the family of the offender. It takes no stretch of t imagination to understand the problems that could emerge from these informal arrangements. As societies grew and cities developed, inhabitants would form governments. In

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Socrates' famous trial involved a jury of 500 randomly selected men and lasted about 10 hours.

western Europe, for example, Sparta and the early Greek states created courts where people accused of crimes would be tried. These courts looked nothing like what we have today, but they did set in motion the idea that the state should create laws and that it, and not individual victims, should punish those who violated the laws.

The trial of Socrates, the famous Greek philosopher, is still discussed in public schools and law schools across America. Socrates was accused of corrupting youth, having motivated many to tak action against the Greek state. Socrates and his accuser, Meletus, met first with a magistrate who had to decide if the case should go forward. Having decided that there was sufficient evidence, th magistrate crafted formal charges—charges that would have to be answered in the people's court.

To hear cases and to determine guilt, the Greeks created a system similar to the modern-day jury system, although only male citizens would be called to hear cases. In Socrates' case, 500 men were randomly selected. "Juries" of the time could range from 50 to 1,500 men. Large juries wer used in order to make it more difficult and less effective to bribe jurors. Democracy and other liberal reforms swept through early Greece, as did the idea that citizens should have a say in criminal matters. In this way, they reasoned, citizens could participate in keeping law and order in their communities. Socrates' trial lasted about 10 hours. Thos bringing the charges were given 3 hours to speak first, followed by Socrates' 3-hour defense. No rules of evidence existed. Immediately after Socrates' defense, the jury took vote. Unlike today, there was no jury discussion; 280 voted guilty and 220 not guilty. After the decision, the trial moved to the punishment phase.

At the punishment phase, the prosecution argued for a specific punishment. In Socrates' case, they recommended death. Other penalties could include exile or banishment, fin and even loss of citizenship. After the prosecution presented its views, Socrates presented his, arguing for a free lunch and a very minor fine. The jury, however, voted for de and, as the story goes, Socrates eventually died by drinking the poison hemlock. By law, a simple vote by a majority of jurors could result in a death sentence or just a small There was no such thing as an appellate court for convicted defendants to argue the fairness of the verdict or penalty.

By modern standards, Socrates' trial violated a number of Constitutional and due process rights, such as the right against self-incrimination. For the crime of "leading youth astray," moreover, his punishment of death would likely violate the right against cruel and unusual punishment. Yet the ancient Greek system of justice was considered quite advanced for its time. The state conducted a public trial of an accused person; it relied on a group of citizens to determine guilt or otherwise, and these same citizens determi what punishment, if any, the offender should receive. The emergence of the power of the state, as we will see, continued to play a critical role in the administration of the criminal justice system and in the punishments used on offenders.

The Greeks were eventually conquered by the Romans, and their states became part of the Roman Empire. With that empire came a powerful government with powerful men known as caesars—in control. The Roman system of justice gave great power to the state or, more precisely, to the representatives of the state. At the time, however, crimes committed between citizens were seen as private matters. Family feuds and vendettas were common and served as a deterrent to would-be criminals. However, formal violati of law still occurred, and punishments for those who violated Roman law were often determined by the social class of the offender. Romans made legal distinctions between slaves, freed slaves, and citizens. The harshest punishments were reserved for slaves. Slaves could be burned or hanged; placed in the Coliseum, where they were almost alw killed in front of a crowd; or they could be crucified. However, free men convicted of a crime against Rome were often merely exiled or banished and their property confisca Still, this was no small matter, as banishment could mean being expelled into parts of the empire that were hostile to Rome—a certain death sentence. For those not exiled, th use of fines and the forfeiture of property were common.

With the decline of the Roman Empire, Europe moved into what are known as the **Dark Ages**. The term reflects the lack of scientific, legal, and cultural advancement that characterized this period, when kings and countries rose and fell. War and disease killed thousands. Crime was still viewed as a private matter, in part because no strong state emerged or could maintain power. Certain offenses, such as murder or theft, could result in the victim's family seeking revenge, not only on the alleged perpetrator but also o the perpetrator's family. In trying to control the violence that sometimes arose from these situations, parties would meet to exact a fine or to exchange property. Moreover, wi the development of feudalism in Europe, where landowners, known as noblemen, enjoyed power over those on their lands, the use of fines and the forfeiture of possessions became more widespread. Large fines and the forfeiture of possessions sometimes had dire consequences. It was during this time, too, that the term *felony* came into existenc Derived from the word *felonia*, it referred to a crime committed against a nobleman.

Moving forward, England, France, and Spain would eventually emerge as powerful states in Europe. Each was ruled by a king and each developed similar but also unique systems of punishment. The English monarchy, where a king ruled with divine authority, strongly influenced our perceptions of punishment and justice. Indeed, the use of the criminal sanction by kings and later queens was in part what led some Englishmen to leave for the new world.

Where crime had once been viewed as a private matter, new legal theories argued that crime was an offense against the authority of the monarchy. Since crime was an offens against the king or queen, it was argued, the monarchy, and not private citizens, should dispense justice. England created a number of local courts to hear criminal allegations The victim was responsible for filing an arrest warrant, locating and bringing the alleged offender to court, and paying for the prosecution. If the offender was found guilty, judges exercised wide discretion concerning the sentence. The idea that similar crimes should be punished similarly had yet to develop. For minor crimes, punishment could range from torture, hanging, flogging, and execution to simply claiming "**benefit of clergy**" and reading the Fifty-First Psalm from the Bible. Offenders could even be let go no punishment at all. For certain crimes, however, such as treason—a broad offense that even included wishing the monarch misfortune—punishment was severe and immediate. Torture was common and extremely brutal. If the offender did not die as a result, execution would immediately follow. Offenders were boiled, beheaded, and drav and quartered—often to the amusement and horror of large crowds.

Before we continue, understand that:

- Prior to the advent of the state, the punishment of wrongdoers was a private matter that resulted in violence and revenge.
- The advent of a powerful state shifted the authority for punishing criminals from individuals to the state.
- Historically, the punishment of offenders has included everything from death, to torture, to exile, to forfeiture of property, to fines. The use of incarceration had yet to develop.
- Punishment was often not consistently applied or proportional to the offense.
- Punishment was sometimes based on extralegal factors, such as the social status of the offender, which ultimately reduced the legitimacy of the law and the sanction.

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The guillotine was used as a humane form of execution during the French Revolution.

Work and the Rise of the Institution

The expansion of England as a world military and economic power influenced the punishment of its criminals. With the expansion of England came a growing need for laborers, and it was quickly recognized that many convicts were available. Companies, moreover, would pay the monarchy for the use of convicts, thereby making convict labor profitable to the Crown. Criminals could be sentenced to hard labor in lieu of execution. This might mean that they would be sent oversees to work on plantations, in mills, or as seamen on ships. A sentence of servitude may have spared an offender's life and been better than torture, but it by no means easy.

Transportation of convicts to the new colonies occurred between 1717 and 1775 and was stopped after America won its independence from England. During those years arou 10,000 convicts were sent to the colonies to work primarily on plantations. Even after transportation to America was halted, England continued to transport convicts to Austra Over 135,000 convicts were sent to work in Australia before the practice ended in 1875.

The new American colonies imported some of the English methods of punishment, including hanging. However, the colonies also relied heavily on branding, such as brandin "T" on the hand of a thief. They also developed punishments that were meant to (1) embarrass, shame, and humiliate offenders and (2) enforce moral and religious beliefs. T public shaming of an offender was not only retributive but also meant to encourage offenders to take public responsibility for their offenses. The colonists burned to death individuals accused of witchcraft and by use of a "dunking chair," dunked people (some of whom drowned) in water to gain confessions or as a form of punishment. Nonetheless, colonial punishment was a public affair often rooted in strong religious convictions. It was sometimes intended to shame offenders so they could return to the congregation, having atoned for their sins, while at other times the punishment was meant to deliver divine justice and to send the offender back to God for judgment. As in England, punishment was physical and involved the infliction of pain.

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Pillories were used to restrain criminals.

Beginning in the 16th century, England created a number of workhouses where the poor and som criminals were sent. In due course, workhouses expanded to most parts of England. Owing to the end of the transportation of convicts, England turned to the use of physical punishment instead. Under English law, even minor crimes, such as pickpocketing, could result in execution. Indeed, at one point England had over 350 offenses that could be punished by death. Executions were usually well attended by citizens who often brought their children along to watch.

These institutions served as a springboard for changes that would move England and the United States away from the physical infliction of pain on criminals. In a major philosophical challenge to the use of capital and physical punishment, reformers sought not only to curtail what they saw as the excessive use of harsh punishment but also the arbitrary application of these punishments. Scholars, such as Jeremy Bentham (1748-1832) and John Stewart Mill (1806-1873), known as **utilitarians**, argued that punishment should be proportional to the offense and just severe enough to offset any gains achieved by the crime. They also argued against capital punishment and for a new kind of punishment—one that moved away from the physical infliction pain on offenders to one that deprived them of their freedom.

These ideas gave rise to the creation of the institution in corrections. The first of these institutions were known as **penitentiaries**. Recognizing the religious influence of some American penal reformers, penitentiaries were to be places where convicts would repent for their crimes. Since their inception, the names for these institutions have changed. Today we simply refer to them as prisons, which comes from the term ***privation***, or being deprived. The power of reform arguments has stayed with us as well. Today, conv are sent to prison to deprive them of their freedom. They are sent to prison as punishment, not *for* punishment. Indeed, the deprivation of freedom as the consummate crimin penalty represented a major historical change to the way in which offenders are sanctioned. Today, loss of freedom as a penalty for crime has almost totally replaced the phys infliction of pain on offenders. None of this could have happened, however, without the rise of the state's power or without the intellectual ideas that sought to rein in the punishment of criminals as a way to ensure freedom for everyone else.

This very abridged history of punishment can inform our understanding of punishment today. First, the rise of the state and its authority over all matters of criminal behavior removed the need to retaliate

Stop and Think 7.1

against offenders. This reduced the need for revenge and reduced other social problems associated with revenge. Second, virtually any imaginable punishment has been tried. Brutal, even sadistic forms of punishment have been used, as has exile, forfeiture of property, fines, and other lesser penalties. Third, the restraint on the state's ability to punish criminal offenders grew out of a broader recognition that the state had grown too powerful and exercised power too inconsistently. Restraining the state's ability to punish, largely by eliminating physical punishment, reducing the use of capital punishment, and placing limits on how long most offenders can be punished served to legitimate criminal sanctions and, by extension, the criminal justice system. In modern America, we have a syst of restraint-based punishment largely because our system evolved from the experiences that our predecessors had with harsh and unfairly applied sanctions.

Suppose you were on a state sentencing commission tasked with creating new criminal sentences. Which type of sentences would you advocate for? What would be some of the drawbacks?

7.2 The Philosophy and Goals of Criminal Sanctions

Imagine that you or a close family member had been the victim of a crime—a serious crime in which personal harm was brought to you through no fault of your own. What would you want the state to do with the offender once he or she was found guilty? Would you want the offender executed? Would you want the offender placed in prison for years, decades, or life? Would you want the offender to have a chance to make amends to you, to repay you for your loss, and to hopefully lead a good life in the future? Wh would your reaction be if the criminal justice system did not meet your expectations for punishment, or especially if the criminal justice system refused to punish the offende

These questions strike at the heart of what we mean when we discuss the goals of criminal sentences. Indeed, answers to these questions are usually a mix of wanting offend punished and wanting them to be rehabilitated so that they no longer offend. These are overlapping and sometimes contradictory desires on the part of society. And while it i true that the public demands that criminal behavior be penalized, the public also expects the punishment to be fairly determined and proportional to the offense. Broadly state is not so much that the public, or even many victims, want criminals to be held accountable, but that they also prioritize other competing values.

The goals of criminal sentences, then, represent priorities that the public places on the sanctions administered by the criminal justice system. People may prioritize one goal o another, but that does not mean that they view the other goals as unimportant. Research tells us that even people who work in the criminal justice system hold competing priorities about the purpose of punishing offenders (Ellsworth, 1990). These rationales also serve as the intellectual foundation for many criminal justice policies and sentenci schemes. Policy makers who favor providing offenders with jobs or educational opportunities usually elevate rehabilitation as a priority, while those who advocate broader us of incarceration usually do so from a retributivist, deterrence, or public safety position. Sentencing priorities, moreover, also change over time as public demands change, as crime rates ebb and flow, and as we gain more knowledge into what does and does not work with criminal offenders.

With this said, there are four basic goals of a criminal sentence: retribution, deterrence, incapacitation, and rehabilitation. These goals, or justifications for punishment, serve a the intellectual reason why, and even how, the criminal justice system punishes offenders.

Retribution of "Just Deserts"

As we discussed earlier, every society has a set of rules that governs individual behavior. When a person breaks a rule, there is a general social expectation that some consequence or penalty will be paid by the violator. Making offenders "pay," or holding them accountable, helps to satisfy public demands for justice. This is no small matter history has taught us, when a system of justice fails to dispense justice, it loses social legitimacy, causing victims to take the law into their own hands. Retribution, on the oth hand, helps to satisfy public expectations that offenders be held to account for their behavior because it makes demands that the state punish or sanction the offender's behavi

Retribution is the oldest justification for punishment and can be found in virtually every society. It can also be found in virtually every religious or ethical tradition. The Old Testament view of "an eye for an eye" captures the emotional thrust of historical conceptions of retribution. Many scholars, unfortunately, equate retribution with revenge. Revenge reflects a basic human reaction to the violation of one's rights, property, or person. It is emotional, often not proportional, and falls outside the bounds of legality. **Retribution**, however, seeks proportional, legal action against the ill-gotten gains or destructive actions of the criminal. Even the Old Testament view of an "eye for an eye" actually about making punishments of the time more proportional, less severe, and more just. Retribution was also deeply integrated in the writings of Bentham and Mill, the utilitarian philosophers who provided the intellectual reasons for abandoning the brutal punishments of old. From their point of view, justice required that offenders be punish but also that the punishment be proportional to the crime. In this sense, retribution is as much about fairness and due process as it is a justification for sanctioning offenders.

Contemporary versions of retribution include the philosophy of **just deserts**. This view is deeply rooted in retribution. It emphasizes **commensurate punishment** as a way to address the violation of rights and property committed by the offender. It also assumes that offenders are rational—that is, that offenders calculate the costs and the rewards o their criminal behavior. Because offenders are rational actors, the theory argues, the correct response by the criminal justice system is to elevate the costs of the criminal behavior just enough to offset the gains.

Under a just deserts paradigm, punishment serves only the limited goal of addressing the criminal behavior of the offender. While other benefits may accrue because of punishment, such as an offender being deterred from future criminal behavior, these benefits are not the goal of the punishment. In the words of von Hirsch (1976, p. 4) "The seriousness of the offender's crime—not his need for treatment, his dangerousness, or the deterrence of others—ought to be decisive. Penalties must be scaled in accordance the gravity of the offence, and departures from the deserved sentence should be impermissible—even if they had some crime-control usefulness." From a just deserts perspective, punishment serves *only* to offset the potential or actual rewards associated with crime and nothing more.

Deterrence

Crime, like other behaviors, is the product of choices people make. Burglary, fraud, and other property crimes result from the desires of individuals to take money, goods, and services from others. Even violent crimes are the result of decisions made by actors within a social context (Wright & Decker, 1997). For example, ethnographic research rev that armed robbers choose to commit their crimes when they need money for drugs or rent or when the opportunity looks too good to pass up. Drug offenders who viciously or kill their rivals frequently do so after some degree of planning, while assaults of rival gang members are often carried out to send a message to the leaders of the gang. Th point is, much crime is the result of some form of deliberate mental calculation.

If crime is deliberate action engaged in by individuals who weigh, no matter how slightly, the perceived risks and rewards of their actions, then state efforts to sanction offen may serve to deter others from engaging in similar behaviors. This is known as **deterrence**. Deterrence uses the threat of punishment as well as actual punishment to reduce likelihood that some individuals will engage in crime. In theory, deterrent strategies increase the associated costs of crime and thus alter the **criminal calculus** of people thinl about committing crime.

Deterrence comes in two forms: **general deterrence** and **specific deterrence**. General deterrence seeks to reduce the likelihood of individuals committing crime in the first place, broadly speaking. For example, when you walk past an automobile that is unlocked and see something of value in the front seat, such as a new laptop, you may think about stealing the laptop. This is a strong incentive as laptops are costly. However, you may also think about getting caught, being arrested, prosecuted, and even jailed for th offense. In this sense, you have been deterred by the perceived costs associated with criminal behavior. Note too that the costs are not simply the criminal sanction, such as imprisonment, but also the shame of being arrested and other collateral emotional and practical consequences. In this sense, we punish individuals for crimes in part because doing so sends a message to other would-be offenders that their behavior, too, will be caught and sanctioned.

Yet many people engage in crime. For these individuals specific deterrence seeks to reduce their likelihood of reoffending or recidivating. For example, people placed on probation usually have to agree to live by certain standards, such as keeping a job, not using drugs, and not associating with criminal others. Probation officers use the threat revoking an offender's probation to deter him or her from committing future crimes as well as to gain compliance with probation agreements. Moreover, judges may determin that some offenders need increased supervision or punishment in order to be deterred.

Deterrence theory justifies punishment in light of reducing future misbehavior. In some ways, deterrence theory also overlaps with just deserts, as both argue for proportionali in punishment; but since deterrence theory concerns itself with future behavior its aims are slightly different. Deterrence theory has also proven seductive to policy makers. Efforts to make the conditions of confinement more punitive, for example, are often couched in terms of their alleged deterrent value. Increasing the length of criminal sentences, increasing the use of capital punishment, and many other punitive efforts are often justified by arguing that they will deter crime. The evidence for this, however, i limited by at least three facts:

- First, many crimes are not based on the rational calculations of actors but are instead engaged in by people who are impulsive and who give little thought to the likeliho of getting caught, much less punished.
- Second, the perceived costs of punishment vary from one person to another. Many high-rate criminals, for instance, simply do not see probation or even incarceration as that punishing. Moreover, some people simply do not respond to deterrent mechanisms. They do not see certain sanctions as punitive, do not believe they will get caugh do not care what happens.
- Third, for punishment to change behavior—that is, to deter it in the future—it has to be swift and certain. Our system of justice, with its emphasis on due process protections, however, severely hinders the swiftness with which the guilty can be punished. Moreover, empirical data converge with the experiences of offenders to conclude that the likelihood of getting caught for any single offense is very low. Elliot (1995), for example found that the probability of an arrest occurring for self-repo crimes of violence, including rape and assault, was 0.02. For every 100 self-reported robberies, Elliot calculated that fewer than 10 arrests occurred. The odds, it appears are very much in the offender's favor.

Deterrence is difficult to achieve in our system of justice. Brutal penalties have been declared unconstitutional and efforts to increase the detection of crime often violate other rights or raise privacy concerns. Our system of due process, moreover, makes the application of criminal penalties uncertain and temporally distant from the criminal act. Arrested individuals often wait years before going to trial and, if found guilty, sometimes wait weeks to months to be sentenced for their crimes. Even when individuals plead guilty or do not contest their guilt, they sometimes have to wait months to serve their sentences. In many jurisdictions jails are filled to capacity and turn out offenders after they have served only hours or days of their total sentences. Lindsay Lohan, a well-known troubled actress, for example, was sentenced to 300 days in Los Angeles county jail after being in court 10 times in 2010. By law, she only had to serve 10 percent, or 30 days. She was released less than 5 hours after being admitted.

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Lindsay Lohan appearing in a Los Angeles court in 2011.

Incapacitation

There is one way that is certain to prevent an offender from committing crime in free society—that is, to remove the offender from society. This is the core idea behind **incapacitation**. People confined in prisons or institutions are no longer free to commit crimes in public. Having been removed from society, either through imprisonment or by execution, offenders are incapacitated. They are essentially prevented from engaging in future crime—at least while they are in prison.

Incapacitation has obvious appeal. There is certainty and safety in knowing that a dangerous or recidivistic criminal can no longer bring harm to others. Policy makers have relied on this certainty and intuitive appeal. Yet simple ideas are often, on closer inspection, not so simple. As with any justification for punishment, there are drawbacks.

First, incapacitation's effects, or the amount of crime saved by incapacitating an individual, are determined by how many crimes the offender commits per year. Crime can be reduced by incarcerating a high-rate offender, but many offenders commit crime only sporadically or are low-rate offenders. Incarcerating low-rate offenders saves little in th way of crime.

Second, incapacitation is costly. To place an offender in prison costs $20,000 to $30,000 per year in most states. In California, keeping a single inmate in prison costs $47,00 per year (Legislative Analyst's Office, 2011). This cost has to be offset by the cost savings, in terms of crime, associated with placing an offender in prison. Some offenders engage in crime at a high rate, but their offenses cost society little in terms of loss of property, money, or lives.

Third, some people who commit serious crimes, even murder, are not high-rate offenders, have no history of criminal involvement, and are otherwise prosocial. For example, those who kill others because they were driving while drunk are not always serial offenders. Few would argue that incarceration is inappropriate in these instances, but we

should also expect very little in the way of crime savings.

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Crime is reduced when high-rate serious offenders are selectively incapacitated.

Finally, the vast majority of individuals serving time in prison will eventually leave prison. Some scholars argue tha incapacitation does nothing to change offenders while they are incarcerated and thus will do nothing to reduce crim upon their release (Cullen & Gendreau, 2001). Still others argue that the collateral consequences of incarceration act to increase crime in the future. For example, offenders with histories of incarceration may find it more difficult to la a job upon their release (King et al., 2005).

These limitations being noted, the best estimates find that the expansion of the prison population, which doubled fro 1990 to 2005, accounted for approximately 25 percent of the crime drop in America (Levitt, 2004). Twenty-five percent is considerable, especially when contrasted against other crime-control mechanisms which generally produce no or very limited reductions (Worrall, 2008). Even so, as critics point out, this leaves 75 percent of the crime drop attributable to other factors. Incapacitation as a crime-control policy is limited partly because of the **law of diminishing returns**. As mentioned, crime is reduced when high-rate serious offenders are **selectively incapacitate** —that is, are targeted for increased punishment. However, there are only so many such offenders in the population. As the pool of these offenders was depleted and as policy makers made more and more crimes subject to incarceration, more low-rate offenders were incarcerated. And as policy makers began to rely on **mass incarceratio** they reduced the crime savings associated with incapacitation.

Today a strange mix of motives is affecting the use of incarceration to incapacitate offenders. With a major recessio reducing state budgets, many states have sought to rely less on incapacitation and imprisonment. Institutions on the drawing boards have not been built while other prisons ha been closed. Moreover, some states are making it more difficult to incarcerate an offender, mandating treatment in some cases and the use of intermediate sanctions in others. Time will tell if these efforts lead to more or less crime.

Rehabilitation

The Progressive Era of 1890 to 1920 ushered in a new theory of corrections. The idea was to treat the underlying conditions or causes of criminal behavior, not just to punis behavior. Progressive reformers sought to change the way offenders were understood, the ways in which the criminal justice system reacted to their behavior, and how they w sentenced. For progressives, criminals were the products of a bad environment and other forces beyond their control. Because of this, they were in need of treatment, therapy job skills. In order to accomplish these therapeutic goals, offenders were to be sentenced to an indeterminate amount of time in an institution—an institution whose goal it w promote rehabilitation. Only after positive recommendations from social workers, therapists, and psychiatrists would offenders be released. Treatment, after all, was to be specific to the individual.

Early advocates of rehabilitation as a goal of corrections imagined a criminal justice system similar in aim and purpose to the medical system—where problems are diagnose and effectively treated. This became known as the **medical model**. As a goal of corrections, rehabilitation remained a dominant priority through the 1960s, when serious questions began to emerge. These centered around three themes: First, many scholars began calling into question the effectiveness of rehabilitation programs and efforts. Rob Martinson, after reviewing a number of evaluation studies stated in 1974 that "with few and isolated exceptions . . . it appears that nothing works." Martinson's stinging indictment of the effectiveness of rehabilitation cannot be overstated (Cullen & Gilbert, 1983). It served as a tipping point in the debate about rehabilitation and helped to red the priority given to rehabilitation as a correctional goal through the 1970s and 1980s. Second, since rehabilitation was a highly individualized effort—requiring individual plans, interventions, and indeterminate amounts of time before being accomplished—issues of fairness emerged. Examples abounded. For instance, one armed robber might b incarcerated for a few short years while another is sentenced to decades. In due time these types of disparities began to be viewed not as necessary tools to rehabilitate crimi but as reflecting an unfair exercise of state power. Finally, what constituted "rehabilitation" by the state was often merely punishment cloaked in another name. Conditions in prisons during this time were harsh; they were overcrowded and in some places brutal. Calling these conditions rehabilitative struck many as nonsensical.

Modern reinterpretations of the rehabilitative ideal have been advanced, largely by a group of Canadian psychologists (Andrews & Bonta, 2010; Gendreau & Ross, 1987) and by a few American scholars who never abandoned the rehabilitative ideal (Cullen, 1994; Palmer, 1992). Their work has become known as the "what works" movement in correctional programming. While Martinson claimed that few programs worked to reduce recidivism, a close inspection of his data reveals that about 40 percent of the programs analyzed showed significant reductions between experimental and control groups. Using this information, these scholars began looking at what successful programs had in common. We will discuss this in more detail in Chapter 9, but for now note that their work has been used widely in corrections departments across the United States and that many programs based on rehabilitation have been shown to work in reducing offender recidivism (Andrews et al., 1990; Lipsey Cullen, 2007). Whether rehabilitation will emerge as a dominant correctional goal in the future is uncertain, but many states are once more turning to the promise of rehabilitation as a crime-control mechanism.

Stop and Think 7.2

What should be the goal of criminal sanctions? What are the limitations of each goal?

7.3 Sentencing Models

Thus far we have examined the history and goals of criminal sentencing. As we have learned, criminal punishments used to be very harsh, even brutal. The historical trend, however, has been to move away from physical punishment and toward narrowly prescribed punishments that are limited by law. We have also learned that there are multiple goals to punishment and that each goal has a set of limitations. The question that then emerges is exactly how does the criminal justice system sentence individuals? This is a practical question that is substantially important because it affects the lives of millions of people.

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Judges decide whether offenders with multiple offenses will serve out their sentences concurrently or consecutively.

In the United States, legislatures give judges a range of sentencing options from which they may choose the most appropriate sanction for a convicted offender. Judges are generally not free to impose any punishment they wish, although in most cases there is room for **judicial discretion**. The types and lengths of sentences vary depending on the severity of the offense. Misdemeanor offenses generally do not result in sentences more severe than prison terms of one year or less; however, felony offenses can result in prison sentences from 1 year in prison, to life in prison, t even death. Again, this depends on the level of the felony. The central goal is to keep the sentence proportionate to the severity of the offense. A secondary goal is to try to treat individuals convicted of similar crimes similarly.

Judges are usually permitted to decide whether offenders convicted of multiple offenses will carry out their sentence concurrently or consecutively. **Concurrent sentences** are those that are served simultaneously. For example, if an individual is convicted of two separate crimes and receives a 5-year sentence for each, he or she would serve both sentences at once and be eligible for release after 5 years. In contrast, **consecutive sentences** must be served one af the other. In this situation, the same individual would serve the first sentence of 5 years and, upon completion, woul begin the second 5-year term for the other offense, resulting in a total of 10 years of imprisonment.

The type of sentence one receives may also depend on other factors. The characteristics of the offender, for example may influence judicial decision making. Juvenile delinquents may receive milder sentences than adult offenders. Chronic or repeat offenders may receive harsher sentences than first-time offenders, with whom judges may be more lenient. Prison crowding has also been a major concern in many jurisdictions for decades, resulting in the development and increased use of alternative sentences. Before we examine these alternative sentencing strategies, however, keep in mind that in practice about 90 percent of all criminal cases are determined through **plea agreements** betwee the prosecutor and the defense counsel (Devers, 2011). Plea agreements are reached through a process of negotiation in which the defendant pleads guilty to a lesser offense fewer charges in exchange for a more lenient sentence or a reduction in the level of criminal charges.

Indeterminate Sentencing

In 1870, the first meeting of the American Correctional Association was held in Cincinnati, Ohio. During the meeting, standards and principles for managing offenders were developed, as well as an early release system. This initiated the use of parole in the United States and led to changes in state sentencing structures that dominated for most of 20th century. Under the **indeterminate sentencing** model, the sentencing judge is granted a substantial amount of discretion. The judge determines the type of sentence and t minimum and maximum lengths of prison terms, such as 1 to 3, or even 1 to 20 years. This type of sentencing structure also allows the judge to consider specific details of e case. For example, the judge may consider the motivation for committing the crime (e.g., need for money, seeking revenge), the role of or harm to the victim, the amount of remorse the offender displays, and the likelihood that the offender will be rehabilitated.

The actual length of time an inmate will remain in custody is determined by the **parole board**. Indeterminate sentencing models are based on the goal of rehabilitation. If convicted offenders demonstrate that they have been reformed while incarcerated, usually by good behavior, they may be granted an earlier release through parole. Because parole boards are afforded the final determination of an offender's sentence length, the board has great discretion. This system also provides some incentive for offenders to actively participate in their own rehabilitation. Inmates can take advantage of prison programming, such as substance abuse treatment or anger management training, in an eff to convince the parole board that they are ready to rejoin society.

Table 7.1 Advantages and Disadvantages of Indeterminate Sentencing

Advantages	Disadvantages
• Individualized case processing • Based on the goal of rehabilitation • Considers public safety in release decisions • Release decisions are made by officials in direct contact with the offender • Promotes professionalism and effectiveness of criminal justice officials	• Can result in disparate sentencing for those convicted of similar crimes • Broad discretion among criminal justice officials allows for biases or stereotyping to influence decision-making • Limited available and low quality of programming can limit opportunities for reform • Offenders may not receive the "deserved punishment" • Decisions are made "behind-closed-doors" without realization of

- Decisions are insulated from public attention, making sanctions less emotionally charged
- Allows for corrections administrators to efficiently deal with overcrowding and limited resources

the public's view

- Treatment effectiveness among offenders was questioned

Adapted from Tonry, M. (1999). Reconsidering indeterminate and structured sentencing. Washington, DC: National Institute of Justice.

The indeterminate sentencing model existed in every jurisdiction until the 1970s, when American sentencing practices began to change rapidly (Allen et al., 2007). Support fc indeterminate sentencing was lost when it was criticized for being a source of disparity in the criminal justice system. A number of civil rights and prisoners' rights activists claimed that the discretion made available to criminal justice decision makers created opportunities for discrimination based on race, gender, or ethnicity. During this period, there was also a shift away from rehabilitation as a guiding philosophy. Prison riots suggested that the experiences of inmates were not conducive to their rehabilitation, and emerging research suggested that efforts to reform offenders were unsuccessful (Martinson, 1974). In light of these criticisms, several states developed new sentencing strategies; however, some form of indeterminate sentencing is still used in many states (Tonry, 1999).

Structured Sentencing

During the 1970s a number of states turned to a **structured sentencing** model, which was expected to achieve greater **proportionality** and **equity in sentencing** by restricti the discretion of judges (Spohn, 2000). *Proportionality* refers to the relationship between the seriousness of the offense and the severity of the sentence. For example, an offender convicted of petty theft should receive a less severe sentence than one convicted of rape. *Equity* refers to the practice of applying sentences similar in severity to offenders convicted of the same type of crime and the belief that sentencing decisions should not be influenced by the social or personal characteristics of the offenders.

One form of structured sentencing is **determinate sentencing**. Under this model, convicted offenders are sentenced to a fixed term of imprisonment. Determinate sentencing largely takes away the discretion of judges; moreover, states employing this strategy have eliminated the use of parole, since all offenders receive fixed sentences. Even so, a offender's actual time served can be reduced through **good time**. Awarding inmates with a reduction in the number of days served creates incentive for cooperation during incarceration. The ideology underlying this approach is retribution, deterrence, and incapacitation, reflecting the shift toward more punitive strategies and away from rehabilitative efforts.

Some states developed **voluntary sentencing guidelines** during the 1980s. These sentencing recommendations were based on previous sentencing patterns, but judges were n required to adhere to them. This strategy served as an early development in structured sentencing, but it can be applied to both indeterminate and determinate sentencing strategies. The implementation of voluntary sentencing guidelines has not been successful, and many states ultimately abandoned the use of voluntary guidelines.

The next development in structured sentencing was **presumptive sentencing guidelines**. Unlike voluntary sentencing guidelines, these require that judges adhere to the applicable guidelines for each case. In some states, sentencing decisions are based on scores derived from the use of a **sentencing grid** that incorporates the seriousness of th current offense and the offender's criminal history. Offenders who have a longer criminal history are more likely to recidivate and are considered to pose a greater threat to th public. The use of sentencing grids, such as the one displayed in Table 7.2, allow the sentencing judge to impose a sanction that is proportionate to the current offense, but al takes into consideration public safety.

Judges are permitted to impose sentences outside of the guidelines, but they are required to provide written explanations for their decisions to do so. Departures from the sentencing guidelines may be justified if aggravating or mitigating circumstances exist. **Aggravating factors** are those that cause the offense to be considered as more serious than usual and generally result in harsher sentencing. Examples of aggravating circumstances include particularly heinous or cruel acts, possession or use of a deadly weapon during the crime, or offenses against law enforcement officers. **Mitigating factors**, on the other hand, are those that decrease the blameworthiness of the offender. These fact typically result in a reduction of the severity of the sentence. Mitigating factors can include cooperation with law enforcement, acting under strong provocation, or being of g character.

Table 7.2 Massachusetts Sentencing Grid

Level	Illustrative Offense	Sentencing Range				
9	Murder	Life	Life	Life	Life	Life
8	Manslaughter (voluntary) Rape of a child with force Aggravated rape Armed burglary	96–144 mos.	108–162 mos.	120–180 mos.	144–216 mos.	204–306 mos.
7	Armed robbery Rape Mayhem	60–90 mos.	68–102 mos.	84–126 mos.	108–162 mos.	160–240 mos.
6	Manslaughter (involuntary) Armed robbery (no gun) A&B DW (signifi cant injury)	40–60 mos.	45–67 mos.	50–75 mos.	60–90 mos.	80–120 mos.

5	Unarmed robbery Stalking in violation of order Unarmed burglary Larceny ($50,000 and over)	12–36 mos. IS-IV IS-III IS-II	24–36 mos. IS-IV IS-III IS-II	36–54 mos.	48–72 mos.	60–90 mos.
4	Larceny from a person A&B DW (moderate injury) B&E (dwelling) Larceny ($10,000 to $50,000)	0–24 mos. IS-IV IS-III IS-II	3–30 mos. IS-IV IS-III IS-II	6–30 mos. IS-IV IS-III IS-II	20–30 mos.	24–36 mos.
3	A&B DW (No or minor injury) B&E (not dwelling) Larceny ($250 to $10,000)	0–12 mos. IS-IV IS-III IS-II IS-I	0–15 mos. IS-IV IS-III IS-II IS-I	0–18 mos. IS-IV IS-III IS-II IS-I	0–24 mos. IS-IV IS-III IS-II IS-I	6–24 mos. IS-IV IS-III IS-II IS-I
2	Assault Larceny under $250	IS-III IS-II IS-I	0–6 mos. IS-III IS-II IS-I	0–6 mos. IS-III IS-II IS-I	0–9 mos. IS-IV IS-III IS-II IS-I	0–12 mos. IS-IV IS-III IS-II IS-I
1	Operating after suspended license Disorderly conduct Vandalism	IS-II IS-I	IS-III IS-II IS-I	IS-III IS-II IS-I	0–3 mos. IS-IV IS-III IS-II IS-I	0–6 mos. IS-IV IS-III IS-II IS-I
	Criminal history scale	**A** **No/Min. record**	**B** **Moderate record**	**C** **Serious record**	**D** **Violent or repetitive**	**E** **Serious violent**

Sentencing Zones

☐ Incarceration zone ☐ Discretionary zone (incarceration/intermediate sanction ☐ Intermediate sanction zone

Intermediate Sanction Levels

IS-IV = 24-hour restriction **IS-III** = Daily accountability **IS-II** = Standard supervision **IS-I** = Financial accountability

The numbers in each cell represent the range from which the judge selects the maximum sentence (not more than); The minimum sentence (not less than) is two thirds of the maximum sentence and constitutes the initial parole eligibility date.

Source: http://www.mass.gov/courts/formsandguidelines/sentencing/grid.html

Federal Guidelines

The federal government has also adopted a presumptive sentencing strategy for handling federal offender cases. Guidelines are established by the U.S. Sentencing Commissio which was created by the **Sentencing Reform Act (SRA)** as part of the **Comprehensive Crime Control Act of 1984**. The federal guidelines are based on the severity of th offense, which is made up of 43 levels and 6 criminal history categories. Similar to the sentencing guidelines used at the state level, federal judges are permitted to impose a sentence outside of the guidelines if "the court identifies a factor that the Sentencing Commission failed to consider that should result in a different sentence" (U.S. Sentencin Commission, 2011, p. 3).

The federal sentencing guidelines were implemented in 1987 but were quickly met with challenges questioning their constitutionality. Defendants in the federal system argue that the guidelines violated the separation of powers doctrine; however, the U.S. Supreme Court upheld the constitutionality of the formation of the Sentencing Commission i *Misretta v. U.S*. (1989). As a result, in January 1989 the federal guidelines were applied nationwide. Since that time, more than 1 million defendants have been sentenced unc this model (U.S. Sentencing Commission, 2011).

The federal sentencing guidelines have continued to develop through a number of Supreme Court decisions. In *Blakely v. Washington* (2004), the U.S. Supreme Court ruled t the Sixth Amendment right to a jury trial had been violated in Blakely's case and that the facts of a case must be either admitted by the defendant or decided by a jury. A ye later, in *United States v. Booker* (2005), the Supreme Court held that the federal sentencing guidelines were not mandatory but that judges were required to consult the guidel

and take them into consideration in sentencing decisions. Subsequent decisions in *Rita v. United States* (2007), *Gall v. United States* (2007), and *Kimbrough v. United States* (2007) have further encouraged adherence to the federal sentencing guidelines.

The Comprehensive Crime Control Act of 1984 also addressed the issue of "real time" sentencing. Previously, the use of parole and good-time reduced the actual time offenc served by about one third (U.S. Sentencing Commission, 1987). Although these factors reduced crowding and benefited offenders, victims were dissatisfied with these outcon which further motivated the "get tough" attitude toward offenders. The 1984 act led to the development of **truth-in-sentencing** laws, which require offenders to serve a substantial proportion of their original sentences. **The Violent Crime Control and Enforcement Act of 1994** encouraged states to adopt truth-in-sentencing laws, which required violent offenders to serve at least 85% of their original sentences; it also provided $4 billion to the construction of federal prisons. At least 40 states have enacted so type of truth-in-sentencing legislation, and have restricted or eliminated the use of parole and good time (Ditton & Wilson, 1999).

Critics of truth-in-sentencing laws have argued that this approach will drastically increase prison populations, further contributing to the problem of prison crowding. The available research indicates, however, that truth-in-sentencing legislation does generate greater consistency in initial sentencing and actual time served. There is also evidence suggesting that this strategy has not significantly contributed to growing prison populations, which is likely related to existing crime patterns and social factors (Dickey & Hollenhorst, 1999).

Mandatory Sentencing

Several states have adopted **mandatory sentences**, another form of structured sentencing. These sentences are different from presumptive sentences in that they are fully mandatory. Sentences for specific offenses and for **habitual offenders** are clearly defined and judges are not permitted to deviate from them. By implementing mandatory sentences, legislators indicate that specific crimes will be not be tolerated and those who commit them will be met with harsh penalties. This sentencing model is based on philosophies of retribution and deterrence and does not promote the rehabilitation of the offender.

Recently some states have enacted "**three strikes**" laws targeting habitual offenders. In most of those that have adopted this type of legislation, offenders convicted of three violent felonies and in some cases also drug offenders receive substantially longer prison sentences than those typically imposed. In some cases offenders are sentenced to lif prison with no opportunity for parole. The goal is to deter known, potentially violent offenders and to incapacitate those who have repeatedly threatened the safety of the pub

The effectiveness of three-strikes policies has been highly debated. Recent research, however, suggests that their adoption may not have produced the intended results. Worral (2004) examined counties in California that had employed this approach between 1989 and 2000. The results indicate that the law has "virtually no deterrent or incapacitatin effects on serious crime" (Worrall, 2004 p. 293). A study of 188 cities across the United States from 1988 to 2000 also did not support this policy (Kovandzic et al., 2004). Furthermore, a community survey by Applegate and colleagues (1996) found that when citizens are presented with questions that include specific details as opposed to broad questions, support for three-strikes policies is lower than expected. Citizens are supportive of the use of three-strikes laws only for the most serious offenders.

Another form of mandatory sentencing is referred to as **mandatory minimum sentencing**. Mandatory minimums were established by Congress in 1986 in response to the growing concern over violence and drugs. As such, many of the minimum sentences for drug violations were based on the weight of volume of the drug sold and the presenc a firearm. Mandatory minimums could range from 5 years for some offenses to 10 or 20 years for others. Problems with mandatory sentences quickly emerged, especially mandatory minimum sentences. First, whether or not a person was eligible for a mandatory sentence depended on the decision of the prosecutor as to what the offender woul charged with. Second, in some cases the guiding principle of proportionality was clearly violated. Nonviolent offenders, offenders who had not physically harmed anyone, we sometimes given sentences that far exceeded the gravity of their offense. For example, certain drug offenders who were subject to mandatory sentences received terms of incarceration longer than offenders who had committed murder, robbery, or rape. In some instances, mandatory minimum sentences can contribute to prison overcrowding. In recent years, however, mandatory minimums have been applied less frequently to drug offenders than to sex offenders. Federal mandatory minimum laws for certain sex offenses are shown below (Title 18, United States Code):

- § 1591(b)(1) and (2) (minimum 10- or 15-year term for sex trafficking of a minor depending on the age of the victim)
- § 2241(c) (minimum 30-year term for traveling across state lines with the intent to have sex with a child under 12 years of age or for crossing state lines and having sex with a child between the ages of 12 and 16 under certain aggravating circumstances)
- §§ 2251(e) and 2260(c)(1) (minimum term of 15 years for production of child pornography and enhanced minimum terms if such a defendant has a prior felony convict for an enumerated sex offense)
- § 2251A(a) & (b) (minimum term of 30 years for buying or selling, or otherwise transferring, children for the purpose of participating in the production of child pornography)
- § 2422(b) (minimum term of 10 years for using mails or facilities or means of commerce to cause a minor to engage in prostitution or other criminal sexual activity)
- § 2423(a) (minimum term of ten years for transporting a minor in commerce for the purpose of engaging in prostitution or other criminal sexual activity)
- § 3559(e) (mandatory life imprisonment for second conviction for certain sex offenses again minors)

Intermediate Sentencing

A recent development in sentencing strategies is the use of **intermediate sentences** (also referred to as **alternative sanctions**). Prison and jail crowding have forced states to create sanctions that provide an alternative to incarceration while still ensuring the safety of the public (Latessa & Smith, 2007). Examples of intermediate sentences include

intensive supervision programs, home detention, electronic monitoring, confinement in community-based correctional facilities, shock incarceration (also called "boot camps"), and drug courts. There is substantial variation across intermediate sanctions and the philosophies that guide them. Many of these sanctions are based on "get tough" policies, which seek to deter offenders by imposing stricter penalties. On the other hand, some sanctions, such as those of drug courts, are treatment-based and focus on the rehabilitation of the offender.

Some judges have started imposing innovative, nontraditional sentences in order to shame the offender. For example, judges have also ordered offenders convicted of theft to stand outside of stores holding signs indicating that they stole from those establishments. In the 2005 "runaway bride" case, Jennifer Wilbanks fled her hometown of Duluth, Georgia, to avoid her wedding to fiancé, John Mason. Her sudden disappearance gained nationwide media attention, and authorities initiated a search for her. Three days after her disappearance, Wilbanks telephoned her fiancé and falsely reported that she had been kidnapped and sexually assaulted. She repeated these claims to police and was ultimately charged for giving them false information. Wilbanks was ordered to pay $2,550 in restitution to the police department and sentenced to 120 hours of community service, which was served by mowing the lawns of government buildings and collecting trash (MSNBC, 2005).

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Runaway bride Jennifer Wilbanks mowing the lawn of a government building as part of her sentence for lying to police.

Stop and Think 7.3

Some people argue that mandatory criminal sanctions are unfair, while others argue that fairness is created by treating offenders similarly. Are mandatory sentences fair? Are they always fair?

Gendreau and colleagues (1996) conducted a meta-analysis to determine the effectiveness of different intermediate sanctions. This study included analyses of 44 intensive supervision programs, 16 restitution programs, 13 boot camps, 13 "scared straight" programs, 9 drug-testing programs, and 6 electronic monitoring programs. The results suggested that such "get tough" sanctions did not reduce recidivism; in some cases, recidivism rates ros after participation in these programs. Nonetheless, intermediate and innovative sentences provide the courts with options that can help to keep some offenders out of prison while at the same time meeting t goals of justice.

7.4 Capital Punishment

In 2006, Katron Walker drove to the home of his father-in-law. After a brief fight, he abducted his two sons, Collin, age 4, and Monte, age 2. Katron's wife, Theresa, had rec filed for divorce and had also filed an order of protection against Katron because of his violent behavior. He drove the boys to a small cabin on a lake where he had prepared handful of knives and stored methamphetamine. Police, who had issued an Amber Alert earlier in the day, received a tip that Katron and the boys were at the lake. Before th could arrest Walker, however, Katron stabbed Collin in the heart. Collin's last words, according to witnesses, were "I love you daddy."

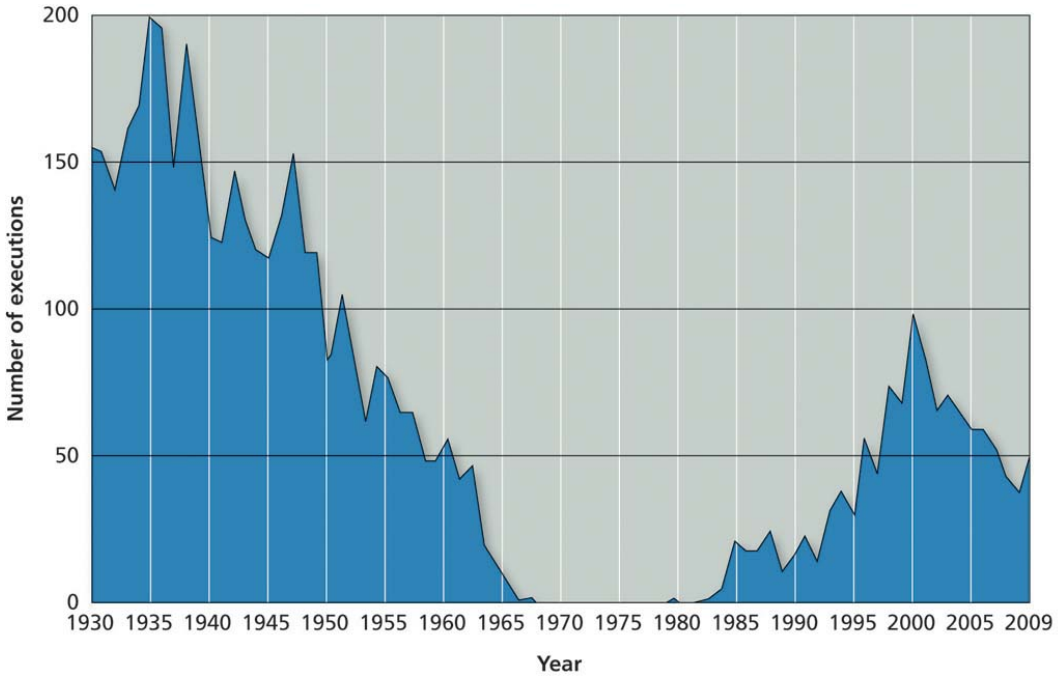
When the police arrived, Walker ran out of the cabin with the naked boys in hand. He entered the lake, where he dropped Collin's body and slit Monte's throat. After a brief struggle, police were able to pull Monte from the lake and save his life. When asked about Collin, Walker told police "He's probably at the bottom of the lake by now."

In the case of Katron Walker, there was no doubt about his guilt. He violently abducted his sons after his wife filed for divorce and, in order to strike back at her, he murdere 4-year-old son and slit the throat of his 2-year-old son in front of witnesses, including police officers. The case, as they say, was "open and shut." This was a capital crime, a Katron faced a death sentence if convicted. Because of this, the legal process essentially ground to a halt. However, after 3 years of legal maneuvering, the prosecutor, with t support of Walker's ex-wife, agreed to a plea bargain that would take the death penalty off the table in return for Walker's admission of guilt. Observers also noted that accep the plea bargain also saved the county about $500,000 in legal expenses. The judge, David Bolk, listened to 3 days of testimony, held the sentencing hearing, and then senten Walker to 95 years in prison. He would be eligible for parole after serving 60 years. After learning of his sentence, Walker walked out of the courtroom and past his ex-wife surviving son. As he did, he said to his ex-wife, "Tell Monte I'll be waiting for him."

Walker's case highlights the essence of the death penalty debate in the United States. At one level, a serious, violent crime occurred in front of reliable witnesses. The crime particularly heinous, involving the death of a child and the attempted murder of another. Yet the criminal justice system in the county where this happened, Vigo County in Indiana, seemed unready for a capital case. Lawyers, for example, had to become "death eligible," meaning they had to have special training in how to defend capital cases. prosecutor's office required the expenditure of extraordinary funds to prosecute the case of an obviously guilty man. And the judiciary grew tired of the constant delays cause by the defense attorneys. The family of the murdered boy, moreover, could only watch as the process grew more and more intolerable. By the time of the plea bargain, the fa was simply exhausted and had no more energy for a trial—a trial that would still be years off.

Figure 7.1: Number of Persons Executed in the United States, 1930–2009

The number of executions gradually declined form the 1930s to the 1960s, increasing again in the 90s. More recent criminal punishment data from the Bureau of Justice may now be available. Visit https://www.bjs.gov/index.cfm?ty=tp&tid=18 (https://www.bjs.gov/index.cfm?ty=tp&tid=18) .



Bureau of Justice Statistics (2010). Capital Punishment, 2009—Statistical Tables. Washington, DC: U.S. Department of Justice.

To death penalty proponents, the Walker case reflects all that is wrong with our current system of capital punishment. Even in cases where the crime was committed in front police officers, they would argue, there are so many procedural and legal safeguards to imposing a death sentence, much less to actually carrying out the execution, that the system has been rendered ineffective. Because of this, it serves no deterrent or retributive function. Yet to opponents of capital punishment, state sponsored death is immoral the safeguards put in place serve to protect anyone who may find himself or herself facing a capital charge.

Yet for all that has been written about it, for all the impassioned debates, all the court cases, and all legal maneuvering it causes, capital punishment is exceedingly rare and, the most part, irrelevant to the day-to-day operations of the criminal justice system. Indeed, what makes capital punishment stand out is that it has evolved into one of the lea used penalties for some of the most heinous crimes. Since the early 1980s, for example, states

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Charles Manson was denied parole at all 12 of his parole hearings since his incarceration in 1971. Manson was found guilty of conspiracy to commit murders carried out by members of his commune.

across the country have executed fewer than 40 people per year on average, and in 2009 only 11 people were sentenced to death (Death Penalty Information Center, 2011). To put this into perspective, 112 cases represent just a fraction of all arrests and only a fraction of all homicide cases.

While death penalty cases are exceptionally rare, they remain unique in the American system of justice. Execution, after all, is the only permanent, irreversible penalty available to the criminal justice system. Executions were much more routine during the early 1900s, when about 200 people were executed each year. Use of the death penalty declined substantially from the 1930s t the 1960s. In 1972, under *Furman v. Georgia*, the Supreme Court temporarily halted executions i America. Capital punishment was reinstated in 1976 through *Gregg v. Georgia*. In 1999, a total c 98 convicts were executed, 35 of them in Texas. The number of executions per year has dropped since 1999. In 2010, for example, 38 people were put to death (Death Penalty Information Center, 2011).

Currently only 34 states and the federal government retain a death penalty option; 16 states have done away with the use of capital punishment. Of the 34 states with the death penalty, many, like California, rarely if ever actually carry through with an execution. In 2011, for example, 18 of th 34 jurisdictions with the death penalty executed not a single person. Most executions, moreover, are carried out in just a few states, such as Texas, Virginia, and Florida. As c January 1, 2011, a total of 3,251 people were on death row awaiting execution. The majority of these individuals will never be executed. Those who will face their demise w sometimes spend 20 or more years on death row. Current trends foreshadow the continued decline in the use of the death penalty. Illinois governor George Ryan, in 2003, commuted the death sentences for 167 people. New Jersey, in 2007, abolished the death penalty, and in 2011, the governor of Oregon suspended executions in his state.

Despite its limited use, the death penalty remains a lightning rod for controversy. Perhaps no other issue stirs as much passion, attention, and rhetoric as does the death penal Each side of the debate has honed its arguments, each makes strong emotional and logical appeals, and each sometimes uses statistics of dubious quality to advance its positi

Pro–Death Penalty

There are several arguments in favor of capital punishment. At the core, these arguments often boil down to retribution. Some crimes, advocates argue, are so heinous, so disturbing, that the only punishment proportional to the offense is death. This view also appears to be part of the reasoning behind the broad public support in favor of the de penalty. Public opinion surveys consistently show that the majority of Americans support the use of capital punishment, although the exact percentages change over time. A Gallup poll of 1,000 adults, for example, found that 65 percent believed the death penalty to be morally acceptable (Gallup, 2011). Moreover, Gallup has tracked public supp for capital punishment since 1936. From 1936 to 2011, public support for the death penalty has ranged from a low of 47 percent in the 1960s to a high of 80 percent in the e 1990s. In 2011, a total of 61 percent of respondents supported the death penalty (**http://www.gallup.com/poll/1606/death-penalty.aspx (http://www.gallup.com/poll/1606/death-penalty.aspx)**).

Retribution aside, advocates also present other arguments. For example, some supporters argue that the imposition of the death penalty serves an important moral function in society. That is, by severely sanctioning crimes that many consider "evil," society reinforces its moral prohibitions against such acts. Not only is the death penalty moral, they argue, but not imposing it in certain instances is immoral. Judge Alex Kozinski of the U.S. Ninth Court of Appeals (2002) highlighted this point clearly when he said:

> Immanuel Kant said it best. He said a society that is not willing to demand a life of somebody who has taken somebody else's life is simply immoral. So the question [is] really . . . when the system works and when you manage to identify somebody who has done such heinous evil, do we as a society have a right to take his life? I think the answer's plainly yes. And I would go with Kant and I would say it is immoral for us not to. [**http://deathpenalty.procon.org/view.answers.php?questionID=1038 (http://deathpenalty.procon.org/view.answers.php?questionID=1038)**]

Imposition of the death penalty serves not only symbolic purposes, such as reaffirming social values, but also has the very real effect of incapacitating individuals—permanen With the death penalty, it is guaranteed that a person will not commit crime in the future. In this way, society is spared other evil acts. And when a sentence is carried out, advocates maintain, it serves a general and specific deterrent effect. Supporters of capital punishment argue that when criminals are executed, a message is sent to others who might also think about committing serious crime. Furthermore, a message is also sent to those who would never offend that their efforts to control their own behavior result i the avoidance of penalty and even death.

Some empirical studies also show that the imposition of the death penalty deters other would-be murders. Studies by economists, for example, generally find a deterrent effec In 1975, Isaac Ehrlick published a classic study that purported to find that executions reduced the murder rate. In 2001, Hashem Dezhbakhsh and colleagues found that each execution resulted in 18 fewer murders per year. Again, in 2006, Dezhbakhsh and Shepard found that not only did the frequency of executions result in fewer murders but th during the period in which the Supreme Court imposed moratorium on executions (1972–1976), the murder rate increased by more than 22 percent. "The results are boldly clear," write Dezhbakhsh and Shepard (2006, p. 27), "executions deter murders and murder rates increase substantially during moratoriums." More recently, Land and associat (2009) found that executions were associated with short-term, 1- to 4-month, reductions in homicides.

Deterrence, incapacitation, and retribution are powerful arguments for capital punishment. What is also interesting, however, is that while advocates support having execution carried out more often, they do so only for a very restricted range of offenses. Even those who support capital punishment, for example, believe in due process and

proportionality. They do not want to see the punishment used for minor crimes or even in all cases where a death occurred. Moreover, proponents often point out that even w a death penalty verdict has been reached, appeals can take years or even decades before the sentence is carried out. This makes a mockery of the system, according to proponents, and represents just another way for criminals to avoid paying the ultimate price. According to the Bureau of Justice Statistics, for example, the average length of time between being sentenced to death and being executed between 1973 and 1983 was about 50 months. Owing in large part to the almost endless appeals available to conv in 2009 this had reached 169 months (Snell, 2010). Some states, such as Texas, however, have placed restrictions on appeals available to convicts and have reduced the amou of time between being sentenced and being executed.

Table 7.3 Methods of Execution by State, 2009

State	Lethal Injection	Electrocution	Lethal gas	Hanging	Firing Squad
Total	36	9	4	3	2
Alabama	X	X			
Arizona	X		X		
Arkansas	X	X			
California	X		X		
Colorado	X				
Connecticut	X				
Delaware	X			X	
Florida	X	X			
Georgia	X				
Idaho	X				
Illinois	X	X			
Indiana	X				
Kansas	X				
Kentucky	X	X			
Louisianna	X				
Maryland	X				
Mississippi	X				
Missouri	X		X		
Montana	X				
Nebraska	X				
Nevada	X				
New Hampshire	X			X	
New York	X				
North Carolina	X				
Ohio	X				
Oklahoma	X	X			X

Oregon	X					
Pennsylvania	X					
South Carolina	X	X				
South Dakota	X					
Tennessee	X	X				
Texas	X					
Utah	X					X
Virginia	X	X				
Washington	X				X	
Wyoming	X			X		

Note: More recent criminal punishment data from the Bureau of Justice may now be available. Visit https://www.bjs.gov/index.cfm?ty=tp&tid=18 (https://www.bjs.gov/index.cfm?ty=tp&tid=18) .

Source: Bureau of Justice Statistics (2010). Capital Punishment, 2009—Statistical Tables. Washington, DC: U.S. Department of Justice.

Anti–Death Penalty

Reasonable people disagree with the use of capital punishment. Even those who support capital punishment often do so not with enthusiasm but with hesitancy. It is no small thing to take the life of another, no matter how justified the action may be. Death penalty **abolitionists**, or those who wish to ban the use of capital punishment in the United States, present serious arguments that should be considered in the debate. These arguments are presented below.

The Death Penalty Is Administered Unfairly

Abolitionists argue that the administration of the death penalty is done in a way that invites the arbitrary and unfair use of discretion. They note, for example, that some individuals who engage in crime that could result in a capital charge are never actually charged with a capital crime. Instead, they are spared the death penalty because they plead guilty, as in the Katron Walker case, or they provide the state with important evidence on other criminal activity. Similar behaviors thus are not treated similarly (Vito & Keil, 1988).

The issue of fairness also extends to matters of race and sex. Abolitionists maintain that the death penalty is administered in a way that is racist at worst or, at a minimum, racially biased. In 2009, a total of 42 percent of those on death row were African American while 44 percent were White. Almost 55 percent of all individuals ever executed the United States have been African American—a startling number considering that African-Americans constitute about 15 percent of the overall population. Moreover, some empirical evidence finds that the race of the victim and race of the offender influence who is likely to be sentenced to death. The highest probabilities of being sentenced to d are found when Black offenders kill White defendants (Applegate et al., 1993; Holcomb et al., 2004; Pierce & Radelet, 2005). Research by David Baldus, for example, found that defendants accused of killing white victims were four times more likely to be sentenced to death than defendants accused of killing a member of a minority group (Baldu al., Woodworth, 1990). While proving racial discrimination is very difficult, abolitionists question whether the penalty is administered in a way that is unfair or biased. If it is they argue, the penalty would lose legal and moral legitimacy.

The Death Penalty Does Not Deter Crime

Just as there is evidence showing that the imposition of a death sentence reduces homicides, there is evidence too that the penalty has no deterrent effect or, worse, that the penalty may actually encourage crime. Many increases in homicide rates simply coincide with social movements and general spikes in crime regardless of the death penalty. Death penalty opponents are quick to note that states that do not have the death penalty have crime rates that are similar to and, in some cases, lower than crime rates in state with the death penalty. Moreover, scholars offer serious critiques of studies that purport to show a deterrent effect attributable to executions (Berk, 2005) and note that much the detected deterrent effect of executions can be attributed to a single state—Texas.

Some opponents, however, argue that the penalty not only fails to deter potential offenders but actually causes future homicides. Advocates call this a **brutalization effect**. T idea is that when the state lifts the moral prohibitions against killing, as it does when it executes an individual, that it sends a signal to citizens that killing is acceptable. In th way, the "brutality" of the death penalty may foster additional murders (Bowers & Pierce, 1980). Some empirical evidence supports this idea. Research by Cochran and Chan (2000), for example, showed that murders increased when Oklahoma reinstituted the death penalty.

Capital Punishment Is Financially Costly

While estimates vary, most show that the financial costs associated with the death penalty are greater than the costs of a life sentence. Cost estimates vary based on how quic

and how often the death penalty is actually carried out. Cost estimates in Texas, the most efficient death penalty state, show that each execution costs $2.3 million dollars; in California, capital cases cost state taxpayers more than $114 million per year. Much of this cost comes from the trials and extensive appeals process. They require specially trained lawyers and rely heavily on experts, making these trials often exceedingly costly.

Innocence and Mistakes of Fact

Perhaps the most powerful argument against capital punishment has nothing to do with its effectiveness, costs, or morality. In any system of justice mistakes are made: Witnesses are misidentified, scientific tests are botched, political considerations enter into decisions, and even intelligent jurors miscalculate the weight of the evidence. Of course if carried out, the death penalty cannot be undone should the victim be proven innocent after the fact.

In the past, all criminologists could do was to calculate "error rates," or the likelihood that an innocent person would be placed on death row. The advent of DNA evidence, however, has changed this. In some situations, DNA evidence can be used to assess actual innocence and, in 17 cases thus far, DNA has been successfully used to exonerate men awaiting execution. Since the advent of DNA testing in the mid 1980s, a total of 280 men convicted of felonies and serving time in prison have been exonerated by postconviction DNA analysis (Innocence Project, 2011). While 17 cases represent less than 1 percent of the over 3,000 individuals currently on death row, it is by no means insignificant. Even if the overall error rate was ½ of 1 percent for all felony cases, this would still translate into several thousand people per year being wrongfully convicted serious crime.

Stop and Think 7.4

At a recent death penalty debate, proponents argued for reducing the number of appeals available to convicts in order to increase the deterrent effect of capital punishment. Opponents, however, argued that the death penalty has no deterrent value and should be abolished. Criticize each position.

7.5 Chapter Summary

Rules are necessary for a society to function. Because we have rules, we also have to have consequences for those who violate the rules. As we have seen, the consequences violating the law have historically been very severe. Severity, however, has given way to consequences that are legally derived, usually proportional to the offense, and applie with some degree of consistency. Today, for example, most studies on criminal punishment and sentencing find that the seriousness of the current offense and the offender's p criminal record are the primary determinants of sentence length (Pratt, 1998). While scholars still debate the relative importance of extralegal factors in criminal sentencing, such as race, sex, and socioeconomic status, most sentencing outcomes are now based largely on legally relevant factors. This stands as a testament to the evolution of legally guided and legally restrained punishment. While important exceptions exist, in a broad sense the criminal justice system punishes offenders in a way that is predictable and somewhat consistent.

The goals of punishment have also changed over time. Today we generally do not worry about the souls of offenders in a religious sense, but we do worry about how effecti our efforts to sanction criminals are and about whether our punishments are just and proportional. Again, this is a far cry from where we started out as a country. Moreover, research tells us that American citizens and criminal justice practitioners hold complex views about the goals of punishment. They tend to support capital punishment, but ma also support life without parole as an option (McGarrell & Sandys, 1996; Moon et al., 2000); they want dangerous and recidivistic criminals off the streets, but they also supp efforts to rehabilitate offenders who are incarcerated (Applegate et al., 1997); they support holding less serious offenders accountable, but they also support helping them if th have problems with drug and alcohol addiction or mental health problems. Americans, it appears, want retribution, deterrence, rehabilitation, and, in certain cases, incapacitation. In this sense, the goals of punishment are multifaceted and collaborative, not mutually exclusive and at odds with each other.

Just as our ideas about punishment have changed over time, so too have the ways in which we have sentenced offenders. The tremendous discretion once given to judges through indeterminate sentences has largely been reduced. Most states now rely on presumptive sentencing guidelines that, in some ways, relocate discretion from the judge t the prosecutor. Some crimes, too, now fall under mandatory sentencing guidelines. Whether this represents progress or not is debatable. For those who prioritize treating individuals who commit similar crimes similarly, it likely does. For those who prioritize taking into account individual factors, such as mitigating circumstances, it likely does not. What is known, however, is that no sentencing scheme, just like no single punishment goal, can produce justice in all cases. Discretion, exercised by a prosecutor or a ju invites dissimilarity in treatment. Imposed uniformity in decision making, on the other hand, invites injustice. The balance is difficult to achieve.

Critical Thinking Questions

1. What lessons does history teach us about the use of punishment?
2. Which philosophy of punishment do you subscribe to and which do you believe is most effective? Why?
3. What are the benefits and problems associated with each sentencing model? Which model do you support? Why?
4. The death penalty remains highly debated even though it is infrequently used. Describe the nature of this debate. Should we keep the death penalty or do away with it?

Key Terms

Click on each key term to see the definition.

Abolitionists
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Individuals who support banning capital punishment in the United States.

Aggravating factors
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Legally determined factors that may be used to increase the seriousness of a criminal charge or a criminal sentence.

Alternative sanctions
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Sanctions that fall outside of traditional penalties; often designed to shame offenders publicly.

Benefit of clergy
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Historically clergy could not be tried by a common court. As evidence of ecclesiastical training, accused citizens would "read" from the Bible. The ability to read was uncommon and largely associated with clergy.

Brutalization effect
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The idea that execution of an inmate encourages homicides by reducing moral prohibitions against killing.

Commensurate punishment

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Punishment that is considered proportionate to the seriousness of the offense.

Comprehensive Crime Control Act of 1984

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Massive anticrime bill passed by Congress that expanded the role of the federal government in crime control; later overhauled the federal sentencing system to include the us sentencing guidelines.

Concurrent sentences

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Criminal sentences that run at the same time.

Consecutive sentences

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Criminal sentences that run one after another.

Criminal calculus

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The idea that offenders weigh the future benefits and costs of criminal behavior.

Dark Ages

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A period in European history characterized by the absence of strong governments as well as physical hardship and the lack of social advancement.

Determinate sentencing

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Sentencing strategy that restricts or removes judicial discretion.

Deterrence

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Theory that future crime can be reduced by increasing the costs associated with crime, the certainty of detection and arrest, and the swiftness of the punishment.

Equity in sentencing

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The idea that people convicted of similar crimes should receive similar sentences.

General deterrence

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Reducing the likelihood that members of any society will commit crime by punishing those convicted of crime.

Good time

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A mechanism that reduces the amount of time a prisoner remains incarcerated. Good behavior, such as staying out of trouble and attending rehabilitation programs, results in reduced time in jail or prison.

Habitual offenders

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Those who continue to commit crimes repeatedly throughout life.

Incapacitation

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Removing the ability of a convict to commit crime in open society.

Indeterminate sentencing

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A sentencing scheme that allows judges to sentence people convicted of a crime to a minimum and maximum period of punishment.

Judicial discretion

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The degree to which judges can decide the type and length and sentence for a person convicted of a crime.

Just deserts

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A theory of justice holding that offenders must be sanctioned for their crimes but that the punishment must be proportional to the offense.

Law of diminishing returns

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

In criminal justice, reflects the idea that additional increases in the prison population eventually reduce the effectiveness of incarceration.

Mandatory minimum sentencing

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A sentencing scheme that mandates a minimum sentence for specific offenses.

Mandatory sentences

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Sentences dictated by the legislature that severely limit or curtail judicial discretion.

Mass incarceration

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The use of incarceration as a primary crime-reduction tool.

Medical model

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Reflects a philosophical orientation that equates crime to having a disease—that is, it is outside the person's control. Also views the role of the criminal justice system as one treats crime instead of punishing behavior.

Mitigating factors

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Legally defined factors that reduce culpability or are taken into account by the courts to reduce the criminal penalty.

Parole board

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A board, often appointed by a governor, that reviews the files of inmates petitioning for parole. Makes decisions to approve or deny parole requests.

Penitentiaries

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Name for early prisons designed to reflect the religious connection of doing "penance" for one's sins.

Plea agreement

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

An agreement between a prosecutor and a defendant. Usually involves the defendant agreeing to plead guilty in return for a lighter sentence or reduced charge.

Presumptive sentencing guidelines

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Sentencing scheme that provides judges with preferred types of punishments and lengths of punishment. Departures from the guidelines are allowed but usually require a judg
to explain why.

Privation

(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

The inability to fulfill one's material, emotional, and psychological needs.

Proportionality
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Belief that the punishment should reflect the gravity of the offense.

Retribution
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A philosophy holding that criminals should be punished solely in terms of their misdeeds.

Selective incapacitation
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Selecting high-rate, chronic offenders for longer periods of incarceration.

Sentencing grid
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Used in sentencing guidelines that direct judges toward specific punishment outcomes. Usually based on the seriousness of the current crime and the offender's prior record.

Sentencing Reform Act
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A law that eliminated parole in the federal justice system and created the U.S. Sentencing Commission.

Specific deterrence
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Reducing the probability of offending among those already arrested or criminally active.

Structured sentencing
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Sentencing guidelines that provide judges with legislatively determined penalties.

Three strikes
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Common term given to a sentencing scheme that requires a mandatory sentence after an offender has been convicted of two other felonies.

Truth-in-sentencing
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Political efforts to make the actual amount of time served by inmates more closely mirror their sentence.

Utilitarians
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

A group of philosophers who argued for minority rights, proportionality in sentencing, and other liberal reforms.

Violent Crime Control and Enforcement Act of 1994
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Largest and most expensive crime-control bill every passed by Congress. Known for increasing the number of crimes subject to capital punishment as well as providing fund for increased use of incarceration.

Voluntary sentencing guidelines
(http://content.thuzelearning.com/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.030

Wholly voluntary sentencing scheme provided to judges by a legislature.

Web Links

A link to the American Correctional Association: **www.aca.org (http://www.aca.org)**

U.S. Sentencing Commission, which reports directly to Congress: **www.ussc.gov (http://www.ussc.gov)**

Information about Texas's history of capital punishment: **http://www.tdcj.state.tx.us/death_row/dr_facts.html (http://www.tdcj.state.tx.us/death_row/dr_facts.html)**

Detailed information about Texas executions: **http://www.txexecutions.org/default.asp (http://www.txexecutions.org/default.asp)**

Web site that provides information about exonerations: **http://www.innocenceproject.org/know/ (http://www.innocenceproject.org/know/)**

The history of punishment: **http://www.history.org/foundation/journal/spring03/branks.cfm# (http://www.history.org/foundation/journal/spring03/branks.cfm/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sections/front_matter/books/Wright.0304.18.1/sect**

Historical information about the trial of Socrates: **http://law2.umkc.edu/faculty/projects/ftrials/socrates/socrates.HTM (http://law2.umkc.edu/faculty/projects/ftrials/socrates/socrates.HTM)**