

Chapter 11

Punishment and Sentencing

Learning Objective 1

- List and contrast the four basic philosophical reasons for sentencing criminals



Nancy Stone/MCT/Newscom

The Purpose of Sentencing

- Philosophical reasons for sentencing
 - Retribution
 - Wrongdoer has freely chosen to violate society's rules and must be punished.
 - Just deserts: proportioned to the crime
 - Deterrence: punishment and prevention
 - General: by punishing one person, others will be discouraged from committing a similar crime.
 - Specific: an individual, after being punished once, will not want to repeat the act and be punished again.

The Purpose of Sentencing

– Incapacitation

- Selective: longer sentences are given to individuals based on their propensity to reoffend.
- Collective: all offenders have similar imprisonment for similar criminal activity.

– Rehabilitation

- Humane goal of punishment
- Crime viewed as “social phenomenon” and criminals as being able to be “treated” and possibly “cured”

– Restorative justice

- Attempts to repair the damage a crime did to the victim (e.g., apology, restitution, monies)

The Purpose of Sentencing

- Restorative justice
 - Dispute resolution and focus on needs of community
 - Attempts to repair damage to victim, victim's family, and society
 - Five components
 - Offender involvement
 - Victim involvement
 - Victim-offender interaction
 - Community involvement
 - Problem-solving practices

Learning Objective 2

- Contrast indeterminate and determinate sentencing.



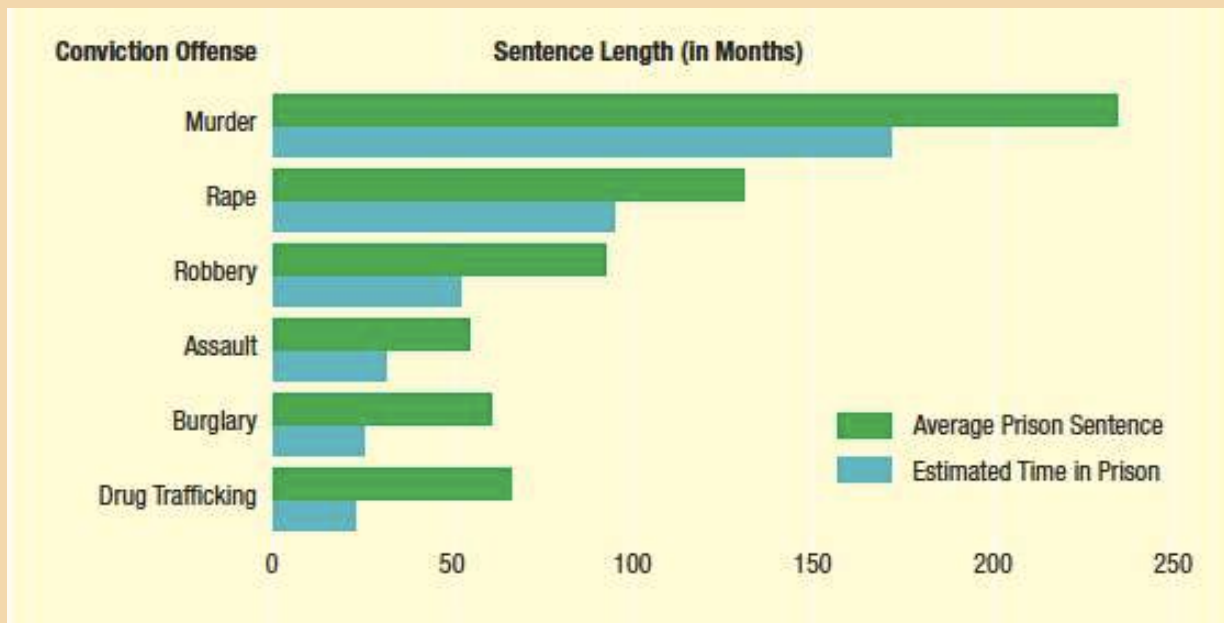
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The Structure of Sentencing

- Indeterminate sentencing
 - Penal codes set a minimum and maximum time that a person must spend in prison
 - Parole
- Determinate sentencing
 - Offender serves exactly the amount sentenced

Learning Objective 3

- Explain why there is a difference between a sentence imposed by a judge and the actual sentence carried out by the prisoner.



Source: Bureau of Justice Statistics, National Corrections Reporting Program: Sentence Length of State Prisoners, by Offense, Admission Type, Sex, and Race (January 20, 2011), "Table 9: First Releases from State Prison, 2008," at bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2056.

The Structure of Sentencing

- Three branches of sentencing authority
 - Legislative sentencing authority
 - Indeterminate sentencing
 - Determinate sentencing
 - Truth in sentencing
 - Administrative sentencing authority
 - Parole and parole board
 - Judicial sentencing authority
 - Capital punishments
 - Imprisonment
 - Probation
 - Fines

Learning Objective 4

- State who has input into the sentencing decision and list the factors that determine a sentence.



AP Photo/Dante Smith/Coshocton Tribune

The Structure of Sentencing

- The sentencing process:
 - The presentence investigative report
 - Recommendations from the prosecutor and defense attorney
 - The role of the jury
- Factors of sentencing:
 - Seriousness of the crime
 - Aggravating and mitigating circumstances
 - Judicial philosophies

The Structure of Sentencing

FIGURE 11.2 Aggravating and Mitigating Circumstances

Aggravating Circumstances

- An offense involved multiple participants, and the offender was the leader of the group.
- A victim was particularly vulnerable.
- A victim was treated with particular cruelty for which an offender should be held responsible.
- The offense involved injury or threatened violence to others and was committed to gratify an offender's desire for pleasure or excitement.
- The degree of bodily harm caused, attempted, threatened, or foreseen by an offender was substantially greater than average for the given offense.
- The degree of economic harm caused, attempted, threatened, or foreseen by an offender was substantially greater than average for the given offense.
- The amount of contraband materials possessed by the offender or under the offender's control was substantially greater than average for the given offense.

Mitigating Circumstances

- An offender acted under strong provocation, or other circumstances in the relationship between the offender and the victim make the offender's behavior less serious and therefore less deserving of punishment.
- An offender played a minor or passive role in the offense or participated under circumstances of coercion or duress.
- An offender, because of youth or physical impairment, lacked substantial capacity for judgment when the offense was committed.



PhotoDisc

Source: American Bar Association.

Learning Objective 5

- Explain some of the reasons why sentencing reform has occurred.



AP Images/Rich Pedroncelli

Inconsistencies in Sentencing

- Three ways disparity occurs:
 - Offenders receive similar sentences for different crimes of unequal seriousness.
 - Offenders receive different sentences for similar crimes.
 - Mitigating or aggravating circumstances have a disproportionate effect on sentencing.

Inconsistencies in Sentencing

- Sentencing discrimination
 - Gender, race, economic standing
 - Race has an impact on length of sentence.
 - Women and sentencing
 - Women convicted of crimes are less likely to go to prison than their male counterparts.
 - Chivalry effect: the idea that women should be treated more leniently than men.

Learning Objective 6

- Identify the arguments for and against the use of victim impact statements during sentencing hearings.



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Sentencing Reform

- Sentencing guidelines
 - Requires judges to dispense legislatively determined sentences based on factors such as the seriousness of crime/offenders priors
 - State sentencing guidelines
 - Minnesota: first to create a Sentencing Guidelines Commission; has become a model for other states
 - Federal sentencing guidelines
 - Sentencing Reform Act for federal sentencing
 - Judicial departures

Inconsistencies in Sentencing

- Mandatory sentencing guidelines
 - Limit judge's power to deviate from determinate sentencing laws by setting firm standards for certain crimes.
- Reforming mandatory minimum sentencing
 - Expand judicial discretion.
 - Limit habitual offender “triggers.”
 - Repeal or revise mandatory minimum sentences.
 - Reform “three-strikes” legislation.

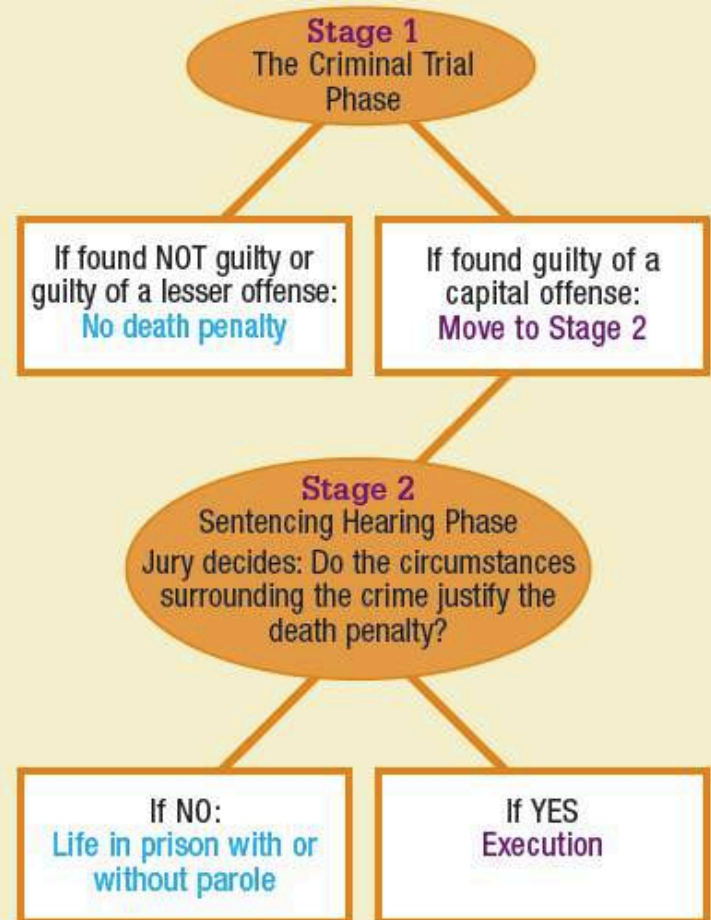
Sentencing Reform

- Victim impact statements (VIS)
- Crime Victims' Rights Act allows victims the right to be heard during sentencing process.
 - Most controversial in death penalty cases
 - Gives survivors a voice in the process
 - Can be considered prejudicial
 - The role of the victim's "social value"

Learning Objective 7

- Identify the two stages that make up the bifurcated process of death penalty sentencing.

Mastering Concepts The Bifurcated Death Penalty Process



Capital Punishment- The Ultimate Sentence

- *Furman v. Georgia* (1972)
 - States have adopted a two-part process for conviction and sentencing.
- The criminal trial phase
 - Jury determines guilt or innocence of the defendant for a crime determined to be punishable by death.
- The sentencing hearing phase
 - Jury considers all aggravating and mitigating circumstances to decide if the death sentence is warranted.

Learning Objective 8

- Explain why the U.S. Supreme Court abolished the death penalty for juvenile offenders.



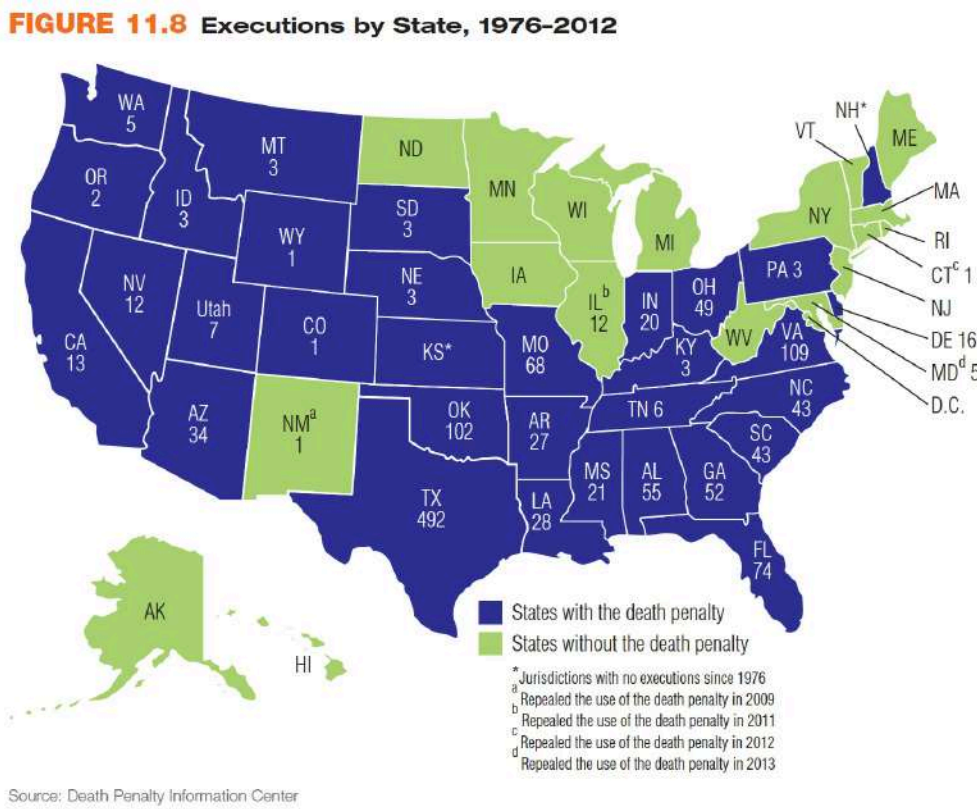
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Capital Punishment

- *Roper v. Simmons* (2005)
 - Under the evolving standards of decency test, executing people who were under 18 when they committed their crime amounted to cruel and unusual punishment.
 - Ended the execution of those who committed crimes as juveniles.
 - The *Roper* ruling required 72 convicted murderers in 12 states to be resentenced.

Learning Objective 9

- Describe the main issues in the death penalty debate.



Capital Punishment

- The debate over capital punishment
 - Deterrence
 - Does it deter crime?
 - Fallibility
 - Does the system make mistakes?
 - Arbitrariness
 - Is it arbitrary?
 - Discrimination
 - Is it fairly applied?

Discussion Questions: The Death Penalty

- Discuss the death penalty as it relates to Timothy McVeigh of the Oklahoma City Bombings. Did he deserve the death penalty? Why or why not?
- Discuss the death penalty as it relates to the Boston Bombing defendant, who is still alive. Does he deserve the death penalty? Why or why not?

Capital Punishment

- The future of the death penalty
 - Decline in executions
 - Life-without-parole alternative
 - Plummeting murder rates
 - High costs
 - Public opinion
 - Support is stronger among older, white people.
 - Support is not as strong in younger generations and members of minority groups.