

Correctional Systems
Chapter 5
Sentencing Law

I. Two Basic Sentencing Structures

A. Indeterminate sentencing - 37 states

1. States legislatures pass laws on crimes and sentencing
2. Determine how much punishment is appropriate
3. Statutory penalty
4. Length of sentence based upon corrections officials determination that offender has been rehabilitated
- 2-6 years.....1000-3000 years
5. All eligible for parole hearing after 11yrs 3 mos
6. Loosely based upon medical model
7. Inmates document participation in programs/religion
8. Illinois has PRB which is separate from IDOC

B. Determinate sentencing

1. How do you tell when someone has been rehabilitated?
2. Parole boards were releasing prisoners early
3. Sentences were inconsistent
4. Determinate sentences reduced judicial discretion
Judges opposed!!!!
5. Illinois - converted to determinate sentencing 2/1/78
Do calculation

II. Sentencing Practices

A. Sentencing guidelines

1. Range of years for criminal charge
 2. Presumptive sentencing
 - falls w/i statutory range
 - Minnesota/Federal courts use matrix
 - Separates crimes requiring mandatory prison from Probation
-
- Federal sentencing into effect 1987
 - Based upon 1984 Comprehensive Crime Control Act
Est. 7 member U.S. Sentencing Commission
 - Confirmed constitutionality by U.S.S.C in *Mistretta v U.S.*
 - Still a number of U.S. District Court judges disagree

B. Mandatory Minimum Sentencing

1. Imposed sentence may have been too light (probation instead of prison)
2. Mandatory Sentences - mandates prison for certain crimes
I.e. violence, drug offenses, repeat offenders, use of Weapon
3. Also requires sentences
 - "Without possibility of parole"
 - "truth in sentencing" mandating % of sentence to be completed (Illinois 85% & 100%)
4. Truth in sentencing
 - I/m's were serving small portion of sentence
Eg. 10 year sentence = 6 mos jail credit + 3 mos
Good time = 4 yrs 3 mos. = 42.5%
 - Illinois TIS - 6/19/98
 - To comply for federal VOI/TIS grants

C. Three Strikes and You're Out

1. Mandates repeated offenders to serve longer offenses
Up to life - Illinois already had law for 3 Class X's
2. Minimal impact on most states except California = 40,500
3. Prosecutors/judges could allow certain offenders to avoid 3 strikes???? Asking for trouble
4. Judge may determine minimum sentence may be too severe

D. Aggravating/Mitigating Circumstances

1. Aggravating = Situations in the offense requiring tougher sentence
2. Mitigating - Situations in the offense requiring lighter sentence
3. Aggravating Factors = age, gender, size, weapon/type, violence, job/duty, infirmity/disability
4. Mitigating factors - age, mental/emotional state, degree of Participation
5. What do judges use to make these decisions?
 - Sentence hearing
 - PSI report
 - Rap sheet/prior convictions/criminal history
 - Statement of facts
 - Victim/witness injury reports

E. Methods for reducing sentence time

1. Jail time -dates provided by county (mittimus/sheriff)
2. Good time
MGT/SMGT (90/90) = 31 day minimum
EGCC (up to 30 days/month)
Comp time/stat time (7 1/2 days per mo/3 mos/year)
3. Concurrent sentencing - sentences served at same time
4. Consecutive Sentencing
5. Extended term - may impose under aggravation factors (pg677)

F. Sentence types

1. Probation
2. Community corrections/periodic imprisonment
3. Restitution
4. Community service
5. Combination of above

G. Informal sanctions

1. Compensation
2. Mediation
3. Supervision
4. Other cultures
 - Africa
 - * Compensation preferred
 - * British rule - restitution/compensation not enough
 - * Additional punishment required under colonial rule
 - ** Customary courts - resolution based on custom
Traditional compensation
 - ** 60% homicide, 40% rape resolved w/o criminal process
 - Japan
 - * Deviant behavior disturbs harmony creating Disharmony and conflict
 - * Avoid embarrassment - put on harmonious face
 - * Avoid embarrassing the group
 - * Apology - admission of failure/obligation to group
 - * Old days - hari kari
 - Germany
 - * Offenders pays under sect. 153a of German Code Of Criminality
 - victim
 - charitable organization
 - state
 - * requires prior consent of defendant **prior to conviction**
 - * traffic, shoplifting, petty offenses
 - * traffic fines based upon income

- U.S. Mediation
 - * Restorative justice
 - person violated = primary victim
 - state = secondary victim
 - * Victim-offender mediation
 - Mostly property offenses
 - has been done in murder cases
 - * Process
 - recommendation by court officials
 - offender must have formally admitted guilt
 - mediator meets separately
 - victim/offender may write letters to mediator/
Each other
 - victim/offender meet
 - * Difficulties
 - unsystematic/little consistency
 - little impact
 - used to avoid further prosecution
 - available only in certain cases
 - priority on securing funding/establish routine
 - set up w/o concrete goals
 - allows informal justice to the disadvantaged
Permits powerful to use formal system

H. Formal Sanctions

1. Fines

- punitive/deterrent purpose
- flexible
- may be combined w/ other sanctions
- don't interfere w/ family/community ties
- tailored to offenders assets
- utilize formal collection process
- used primarily for minor offenses

2. Problems

- unsuited for poor
- ineffective against rich
- too difficult to collect

I. Fines in U.S.

1. Cannot be set high enough
2. Tariff (fixed fine) system - same for similar crimes

J. Day fines in Europe

1. Linked to severity of crime
2. Adjusted to offenders financial situation
3. Germans use day fines for serious offenses
4. One punishment unit = one day's pay
5. Germans use for $\frac{3}{4}$ all property offenses, $\frac{2}{3}$ violent crimes

6. Swede's use for ½ of all property and violent crime convictions

K. Day fines in the U.S.

1. Staten Island court
 - 120 day-fine units misdemeanor
 - 360 day-fine units felonies
2. Match ability to pay
3. Cannot use IRS info & must collect financial data
4. Discounts for people in poverty
5. How do you prevent criminal activity to pay fines?
6. Day fine criteria
 - set reasonable/appropriate term of pay't (3 months)
 - make pay't easy (cash, checks, money order, credit card)
 - Use incentive (discount) for prompt pay't
 - take action when not paid on time