

**GACC CRIMINAL JUSTICE CLASS
ROOM 150
Instructor: (Ret.) Lt. Jack Grennes**

**Chapter 9
Sentencing, Appeals, and the Death Penalty**

Chapter Objectives

1. Identify the general factors that influence a judge's sentencing decisions
2. Describe how judges tailor sentences to fit the crime and the offender.
3. Distinguish between indeterminate and determinate sentences.
4. Explain the three basic types of determinate sentences.
5. List five rationales or justifications for criminal punishment.
6. Explain the purposes of presentence investigation reports.
7. List the legal bases for appeal.
8. Identify the type of crime for which death may be a punishment.
9. Summarize the three major procedural reforms the U. S. Supreme Court approved for death penalty case in the *Gregg* decision.

Lecture Outline

I. Sentencing

If a criminal defendant pleads guilty or is found guilty by a judge or jury, then the judge must impose a sentence.

A. Statutory Provisions

1. fines
2. probation
3. intermediate punishments
4. imprisonment
5. death

B. Types of sentences

1. determinate sentence: A sentence with a fixed period of incarceration, which eliminates the decision making responsibility of parole boards.
 - a. flat time sentencing: Sentencing where judges may choose between probation and imprisonment but have little discretion in setting the length of a prison sentence. Once an offender is imprisoned, there is no possibility of reduction in length of the sentence.
 - b. mandatory sentencing: Sentencing in which a specified number of years of imprisonment is provided for particular crimes.
 - c. presumptive sentencing: Sentencing that allows a judge to retain some sentencing discretion, subject to appellate review. The legislature determines a sentence range for each crime.
2. Indeterminate sentence: A sentence with a fixed minimum and maximum term of incarceration, rather than a set period.
3. restitution: Money paid or services provided by a convicted offender to victims, their survivors, or the community to make up for the injury inflicted.
4. good time: The number of days deducted from a sentence by prison authorities for good behavior or for other reasons.

II. Philosophical Rationales

A. Retribution: A justification for punishment that implies repayment for an offense committed.

1. Revenge: The punishment rationale expressed by the biblical phrase, "An eye for an eye, and a tooth for a tooth." People who seek revenge want to pay back offenders by making them suffer for what they have done.
2. Just deserts: The punishment rationale based on the idea that offenders should be punished automatically, simply because they have committed a crime---they deserve it---and the idea that the punishment should fit the crime.

B. Incapacitation: The removal or restriction of the freedom of those found to have violated criminal laws.

- C. Deterrence: Beccaria and other classical theorists believed that the only legitimate purpose for punishment is the prevention or deterrence of crime.
 - 1. Special or specific deterrence: The prevention of individuals from committing crimes again by punishing them.
 - 2. General deterrence: The prevention of people in general from engaging in crime by punishing specific individuals and making examples of them.
- D. Rehabilitation: The attempt to “correct” the personality and behavior of convicted offenders through educational, vocational, or therapeutic treatment and to return them to society as law-abiding citizens.
- E. Restoration and Victims Rights: There are attempts being made today to restore victims, as much as possible, to their previous state and to make them “whole” again.
 - 1. Victim impact statements: Descriptions of the harm and suffering that a crime has causes victims and their survivors.

III. Organizational Considerations

- A. The practice of plea-bargaining.
- B. Capacity of the system.
- C. Cost-benefits of the sentence

IV. Presentence Investigation Reports

Reports, often called PSIs or PSRs, that are used in the federal system and the majority of states to help judges determine the appropriate sentence. The are also used in classifying probationers, parolees, and prisoners according to their treatment needs and security risk.

- A. Allocution: The procedure at a sentencing hearing in which the convicted defendant has the right to address the court before the sentence is imposed. During allocution, a defendant is identified as the person found guilty and has a right to deny or explain information contained in the PSI if his or her sentence is based on it.
- B. Pardon: a “forgiveness” for the crime committed that stops further criminal processing.

V. Appeals: Generally, the request that a court with appellate jurisdiction review the judgment, decision, or order of a lower court and set it aside (reverse it) or modify it; also, the judicial proceedings or steps in judicial proceedings resulting from such a request.

VI. The Death Penalty

A. Brief History of the Death Penalty in the United States

- 1. The earliest recorded lawful execution in America was in 1608 in the colony of Virginia. Captain George Kendall, a councilor for the colony, was executed for being a spy for Spain. since Kendall, nearly 19,000 legal executions have been performed in the United States under civil authority.

- B. Types of executions allowed in U.S.
 - 1. Lethal injection (Currently used by most states.)
 - 2. Electrocution
 - 3. Lethal gas
 - 4. Hanging
 - 5. Firing Squad
- C. Supreme Court Decisions
 - 1. *Furman v. Georgia*: The Supreme Court ruled that that application of the death penalty, as it was currently being used, was unconstitutional. The death penalty was arbitrary, infrequent, and used against people of color.
 - 2. *Gregg v. Georgia*: Reinstated the death penalty if the jury imposed it after considering aggravating and mitigating circumstances. Since that time 856 people have been executed. More than half of them in Texas, Virginia and Oklahoma. Under *Gregg* the court would have to have a bifurcated trial. A bifurcated trial is a two-stage trial consisting of a guilt phase and a separate penalty phase.
 - 3. While not required by the Constitution, most states have developed a procedure for automatic appellate review of all death penalty cases.
- D. Prospects for the Future
 - 1. Among western, industrial nations, the United States stands alone as the only nation to employ capital punishment.

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1. What do you think are some of the most important issues to consider when sentencing a convicted criminal?

Answer: Issues can include the severity of the offense, the attitude of the offender (Is he or she remorseful?), the offender's record, and the impact on the victim. Students will be able to name many others.

2. Do you think that victims should play more or less of a role in sentencing?

Answer: Some students will feel that they should have a greater role in demonstrating how their lives were affected by the case, and that they should be protected from defense lawyers that attempt to harass them. Others may worry that victims will become vindictive and expect the court system to tailor the punishment to fit the victim's wishes.