Sentencing

• A sentence is the imposition of a sanction by a judicial authority on a person(s) convicted of a criminal offense or crime.

• The five goals of contemporary sentencing
  – Retribution
  – Incapacitation
  – Deterrence
  – Rehabilitation
  – Restoration
Retribution

• The act of taking revenge on criminal offender.

• This type of punishment is based on the perceived need for vengeance.

• Grounded in religious dictum of “an eye for an eye.”
  – Lex talonis

• Retribution is not an avocation for excessive punishment.

• The punishment must fit the crime.
Incapacitation

- This advocates the use of punishment to reduce the likelihood that the offender will commit future offenses.
- This type of punishment seeks to protect innocent members of society from offenders who might harm them.
- Modern incapacitation strategies separate offenders from the community, not necessarily through incarceration.
- Requires restraint, not punishment.
  - Chemical castration is one example.
Deterrence

• A goal of criminal sentencing that seeks to inhibit criminal behavior through the fear of punishment.

• Two types of deterrence:
  – General – strives to influence behavior in those not yet arrested, but who may be tempted.
  – Specific – seeks to reduce the likelihood of recidivism.
Rehabilitation

- The premise of rehabilitation is the belief that the offender can be reformed.
  - Bad behavior can be modified and changed to conform to societal norms.
  - The juvenile justice system developed and evolved under this principle.
Restoration

• The focus here is on the **victim**.
• This type of criminal sentencing has the goal of making the victim “whole again.”
  – The community is included in this as well.
  – An offense/crime harms individuals as well as the community.
Restorative justice

• This is a sentencing model that builds on restitution and community participation in an attempt to assist the victim.
  – Also referred to as balanced and restorative justice.

• Balance is achieved by giving equal consideration to community safety and offender accountability.
• Focuses on crime as a harm and justice as repairing the harm.
Interderminate Sentencing

• A model of criminal punishment that encourages rehabilitation through the use of general and relatively unspecific sentences.
  – A sentence of 3-5 years for robbery.
  – The presumption is that offenders will participate in their own rehabilitation.
  – Time off for good behavior is a common incentive.
Determinate Sentencing
Presumptive Sentencing

• **Determinate**
  - A model of criminal punishment that is structured in which the offender is given a fixed term of imprisonment.
    - Time off for good behavior is a possibility.

• **Presumptive**
  - The following conditions must be met:
    - Appropriate sentence determined by sentencing guidelines
    - Sentence falls within the range
    - Mechanism for review for departures from guide
Sentencing considerations

• Aggravating circumstances
  – Relate to the commission of the crime that increases the gravity of the offense.
    • Depravity
    • Extreme indifference
    • Premeditation

• Mitigating circumstances
  – Relate to the possibility of reduced blameworthiness.
    • Ignorance
    • Emotional state
    • Physical state
    • Addiction
Mandatory Sentencing

• A structures sentence scheme that allows no leeway in the nature of the sentence.
• Clearly enumerated punishments are mandated for specific crimes and habitual offenders
  – 3-strike laws
Diversion

• The official suspension of criminal or juvenile proceedings against the alleged offender at any point after a recorded intake, but before the entering of a judgment.
Victim Rights

• A grassroots movement in the 1970s resulted in the involvement of crime victims and their survivors in trial and sentencing phases.
  – President George W. Bush warned that crime victims should not and could not be treated as irrelevant bystanders, resulting in a second form of victimization.
Victim-Impact Statements

• This is the *in-court* use of victim- or survivor-supplied information by sentencing authorities seeking to make an informed sentencing decision.
  – Describes
    • Losses
    • Suffering
    • Trauma
Capital Punishment

• The death penalty is the most extreme of all sentence options.
• A capital offense is one that is punishable by death.
• It is estimated that close to 19,000 legal executions have been carried out in the United States since 1608.
• Presently, the federal government and 34 of 50 states permit execution.

  http://www.stateline.org/live/ViewPage.action?siteNodeID=136&languageId=1&contentId=25995
Crimes punishable by death

- Not all jurisdictions permit execution for a standardized list of crimes.
- Of the 34 states and the federal government. The crime of 1\textsuperscript{st} degree murder is punishable by death.
- The federal government may execute for treason.
- Other states allow for execution for
  - Kidnapping
  - Aggravated sexual assault
  - Murder of a police/corrections officer
Landmark US Supreme Court cases

• *Furman v. Georgia* (1972). The court recognized “evolving standards of decency” that might necessitate a reconsideration of the Eight Amendment.

• In a 5-4 ruling *Furman* invalidated the Georgia death penalty due to “unguided discretion” in the use of the penalty.

• The death penalty in Georgia was seen as arbitrary and capricious.

• *Gregg v. Georgia* (1978). The Court formally approved the two-step trial procedure in capital cases.

• The Court found that the two-step process ensured the separation of the highly personal information needed in a sentencing decision from the kind of information reasonable permissible in a jury trial.

• *Post-Gregg* decisions set limits on the use of the death penalty.
  - *Coker v. Georgia* (1972) struck down a law allowing for execution for the rape of an adult woman.
Death Penalty Websites

- [http://www.deathpenaltyinfo.org/](http://www.deathpenaltyinfo.org/)
  - [http://www.njleg.state.nj.us/committees/dpsc_final.pdf](http://www.njleg.state.nj.us/committees/dpsc_final.pdf)