

4 SENTENCING: THE APPLICATION OF PUNISHMENT

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Test Your Knowledge

Test your current knowledge of the criminal sentencing process by answering the following questions as true or false. Check your answers on page 386 after reading the chapter.

1. Basic principles of justice mandate that the criminal justice system punish every person convicted of committing the same crime equally regardless of other differences.
2. The only concern at sentencing is the severity of the crime the defendant has committed.
3. Three-strikes laws allow states to possibly imprison for life a person who has been convicted of a third felony.
4. If a person is convicted of two different crimes committed on two different occasions, they must be sentenced to consecutive terms (one to be served after the other is completed) of probation or prison.
5. Because victims or their survivors can unfairly prejudice a judge against a defendant, with the exception of death penalty cases, victims or survivors cannot have any input into the sentencing decision.
6. Except for statutory limitations, judges basically must decide on appropriate sentences for convicted felons without any guidance or advice.
7. Black people and other racial-ethnic minorities are frequently subjected to discriminatory sentencing.
8. Separate courts exist for criminals with special problems such as drug addiction.
9. All states use guidelines to help judges make sentencing decisions.

sentencing decisions.

Back to Chapter 4 Reading

Learning Objectives

Upon completion of this chapter, the reader should be able to:

- 4.1 Explain how modern sentencing engages Aristotle's notion of justice.
- 4.2 Describe the different types of sentencing and their rationales.
- 4.3 Identify other sentencing options and how they are applied.
- 4.4 Explain the role of problem-solving courts.
- 4.5 Assess the issues surrounding sentencing disparity.
- 4.6 Identify the purpose of presentence reports and sentencing guidelines as well as the contentious issues surrounding them.
- 4.7 Explain the purpose and use of sentencing guidelines.
- 4.8 State factors that may affect the future implementation and use of sentencing guidelines.

VINDICTIVE VERSUS SENSIBLE SENTENCING

"Jane" is a 30-year-old mother of three children aged 8, 6, and 4. Her husband recently suffered a heart attack and died, leaving Jane with no money. Jane has only a 10th grade education and cannot afford child care costs, so she was forced onto the welfare rolls. When Christmas came around, she had no money to buy her children any presents, so she took a temporary Christmas job at the local megastore, where

she earned \$1,200 over a 2-month period. Jane did not report this income to the welfare authorities as required by law, and a welfare audit uncovered her crime. The terrified and deeply ashamed Jane pleaded guilty to grand theft, which carries a possible sentence of 2 years in prison, and was referred to the probation department for a presentence investigation report (PSI).

“Jim” is a 32-year-old man with a lengthy record of thefts and other crimes committed since he was 10 years old. Jim also pleaded guilty before the same judge on the same day and was likewise referred for a PSI. Jim had stolen money and parts totaling \$1,200 from an auto parts store during one of his brief periods of employment.

These two cases point to a perennial debate about the appropriate sentence for people who commit the same crime. Recall the classical and positivist schools of thought discussed in [Chapter 1](#). Although both positions are ultimately about the role of punishment, the classical position maintains that punishment should fit the crime and nothing else. That is, all people convicted of identical crimes should receive identical sentences regardless of any differences they may have. The classical position maintains that Jane and Jim freely chose to commit the crimes, and the fact that Jim has a record and Jane does not is *irrelevant*. The positivist position is that punishment should fit the offender and be appropriate to rehabilitation. Jane’s and Jim’s crimes were motivated by very different considerations; they are very different people morally, and blindly applying similar punishments to similar crimes without considering the possible consequences is pure folly. Think about these two cases and your own position on them as you read about the purpose of sentencing, the way sentencing guidelines are structured, and the uses of the PSI.

INTRODUCTION: WHAT IS SENTENCING?

LO 4.1 Explain how modern sentencing engages Aristotle’s notion of justice.

Sentencing refers to a postconviction stage of the criminal justice process. A **sentence** is the punitive penalty ordered by the court after a defendant has been convicted of a crime by a jury, by a judge in a bench trial, or in a plea bargain.

Sentencing typically occurs about 30 days after conviction.

The goals of sentencing are to implement one or more of the

jury, by a judge in a bench trial, or in a plea bargain. Sentencing typically occurs about 30 days after conviction. The goals of sentencing are to implement one or more of the punishment philosophies discussed in Chapter 1: retribution, deterrence, incapacitation, or rehabilitation. In some states juries may be entitled to pronounce sentences, but in most states, and in federal court, sentencing is performed by a judge—except in death penalty cases, in which it is the jury's responsibility. The penalties meted out at sentencing can include various forms of probation coupled with fines and restitution orders and/or treatment orders, house arrest or electric monitoring, work release, jail time, prison time, or the death penalty, all of which are discussed elsewhere in this book. The severity of the penalty depends on the crime or crimes of which the defendant is convicted and the extent of their criminal history, although other factors, both legitimate and illegitimate, may also come into play.

Sentence: A punitive penalty ordered by the court after a defendant has been convicted of a crime either by a jury, by a judge, or in a plea bargain.

It is a major concern of the American criminal justice system that punishments received by defendants at sentencing should be consistent with justice. **Justice** is a moral concept that is difficult to define, but in essence it means that people must be treated in ways consistent with norms of fairness and in accordance with what they justly deserve by virtue of their behavior. Perhaps the best definition was provided by the Greek philosopher Aristotle many centuries ago: "Justice consists of treating equals equally and unequals unequally according to relevant differences" (cited in Walsh & Stohr, 2010, p. 133). In terms of sentencing, this means that those who have committed the same crime and have similar criminal histories are considered legal "equals" and should be treated equally. Those who have committed different crimes and have different criminal histories are considered legal "unequals" and therefore should be treated unequally; that is, one should be treated either more leniently or more harshly than the other.

Justice: A moral concept of just or fair treatment consisting of "treating equals equally and unequals unequally according to relevant differences."

Photo 4.1 Fairness in sentencing is often a difficult goal to attain, with many factors to consider, such as the type of crime committed and the criminal history of the offender.

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You may ask what these “relevant differences” are and who defines them. Strictly speaking, the relevant differences in sentencing should be limited to legally relevant factors (crime seriousness and prior record), but extralegal factors are often also brought into play, such as gang affiliation, a history of substance abuse, and a person’s rehabilitative potential (as the opening vignette suggests). Depending on what these factors are, justice is either served or not served by adding them. A judge who sentences a remorseful mother—whose children would become wards of the state if she were sent to prison—to probation rather than to prison is probably acting justly. This may be so even if the same judge sentences to prison an unremorseful single man who has committed the same crime and has an identical criminal record as the mother and, thus, the judge is treating legal equals unequally. On the other hand, if the judge sentences legal equals unequally only because one defendant is a woman and the other is a man, or only because one defendant is Black and the other is white, then the judge is not acting justly.

TYPES OF SENTENCES: INDETERMINATE, DETERMINATE, AND MANDATORY

LO 4.2 Describe the different types of sentencing and their rationales.

The prison sentence a person receives can be indeterminate or determinate. An **indeterminate sentence** is one in which the actual number of years a person may serve is not fixed but rather is a range of years, such as the person “shall be imprisoned for not less than 2 or 3 years to 10 years.” More serious crimes move both minimum and maximum time periods upward. Indeterminate sentences were previously much more common than they are today, but a number of states still retain this system. Indeterminate sentences fit the positivist rehabilitation philosophy of punishment because they

periods upward. Indeterminate sentences were previously much more common than they are today, but a number of states still retain this system. Indeterminate sentences fit the positivist rehabilitation philosophy of punishment because they allow offenders to be released after they have served their minimum period if they demonstrate to the parole board's satisfaction they have made efforts to turn their lives around. Such sentences are tailored to the offender and aimed at rehabilitation rather than tailored to the crime and designed to be strictly punitive.

Indeterminate sentence: A prison sentence consisting of a range of years to be determined by the convict's behavior rather than one of a fixed number of years.

The indeterminate sentencing model prevailed most strongly under the so-called medical model, whereby offenders were considered "sick" and in need of a cure. Because some criminals may be "sicker" than others, the time made available for the "cure" must be flexible. Offenders who behaved themselves in prison and could demonstrate that they were "reformed" could be rather quickly released; ill-behaved and stubborn offenders might need to serve the upper boundary (10 years in the above example) and be released whether "rehabilitated" or not. It has been precisely because of its flexibility that indeterminate sentencing has been accused of contributing to sentencing disparity. For instance, even if two offenders receive the same sentence of "2 to 10 years," one may serve only 2 years because they can keep out of trouble and know how to play the rehabilitation/parole game, while the other, who does not play the game as well, may serve 2 or 3 more years. Supporters of the model, however, will reply that it is not the judiciary that is at fault (after all, both offenders were sentenced identically by judges); rather, it is the inmates themselves who caused the discrepancy by their different behaviors while incarcerated.

Prisoners released from state prisons in 1996 had served an average of only 44% of their sentences under predominantly indeterminate sentencing structures (Ditton & Wilson, 1999). Rising crime rates during the 1980s and early 1990s saw a groundswell of opposition to what many saw as "mollycoddling" criminals, and there were many calls for longer sentences. In response to public demands, most states enacted **truth-in-sentencing laws**. These laws require there

groundswell of opposition to what many saw as “mollycoddling” criminals, and there were many calls for longer sentences. In response to public demands, most states enacted **truth-in-sentencing laws**. These laws require there be a truthful and realistic connection between the custodial sentences imposed on offenders and the time they actually serve. They also mandate that inmates serve at least 85% of their sentences before becoming eligible for release. In addition, many states restricted good time credit and/or parole eligibility under these laws.

Truth-in-sentencing laws: Laws that require that there be a truthful, realistic connection between the sentences imposed on offenders and the time they actually serve.

Determinate sentences became more prevalent after the enactment of truth-in-sentencing laws. A **determinate sentence** means that convicted individuals are given a fixed number of years they must serve rather than a range. Under a determinate sentencing structure, the maximum prison time for a given crime is set by the state legislature in state statutes. This structure is more in tune with the classical notion that the purpose of punishment is to deter and that all who commit the same crime must receive a fixed sentence. This does not mean that everyone convicted of the same crime receives the same set penalty. For instance, the maximum time for burglary may be set at 15 years, and a repeat offender may be sentenced to the full 15 years. Another person who is a young first offender may receive only 5 years. Whatever the sentence, offenders know under this sentencing structure how much time they will need to serve. Longer and more determinate sentences satisfy the urge for greater punishment for offenders and serve an incapacitation function. However, time off for good behavior is still granted.

Determinate sentence: A prison sentence of a fixed number of years that must be served rather than a range.

Another type of sentencing is **mandatory sentencing**, sometimes known as mandatory minimum sentencing. Mandatory sentencing can exist in the context of both determinate and indeterminate sentencing structures and simply means that probation is not an option for some crimes.

sometimes known as mandatory minimum sentencing. Mandatory sentencing can exist in the context of both determinate and indeterminate sentencing structures and simply means that probation is not an option for some crimes, and the minimum time to be served is set by law. It is set by law because legislative bodies in various states have decided that some crimes are just too serious for probation consideration (certain violent crimes) or have decided there is a particular problem, such as drug trafficking or the use of a gun during the commission of a crime, that requires mandatory imprisonment as a deterrent.

Mandatory sentence: A prison sentence imposed for crimes for which probation is not an option, where the minimum time to be served is set by law.

Prison sentences imposed for two separate crimes, whether they occurred during the same incident (e.g., robbery and aggravated assault) or in different incidents (e.g., two separate burglaries), can be ordered to be served concurrently or consecutively. A **concurrent sentence** is one in which two separate sentences are served at the same time. If the robbery and aggravated assault crimes both carry sentences of 10 years, for instance, the offender's release date would be calculated on the basis of 10 years rather than 20 years. A **consecutive sentence** is one in which two or more sentences must be served sequentially (one at a time). If the robber/aggravated assaulter received two 10-year sentences to be served consecutively, their release date would be based on 20 rather than 10 years. Therefore, consecutive sentences increase the time a person spends in prison. The judge's decision to impose concurrent or consecutive sentences for persons convicted of two crimes may rest mainly on factors such as the seriousness of the crimes, criminal history, plea bargain arrangements, and offender cooperation. Some have suggested that judges may actually impose harsher sentences on those offenders with the audacity to demand a trial rather than accept a plea bargain, because it makes extra work for the judge. This philosophy has been expressed as the judge's warning—"You take some of my time and I'll take some of yours" (Neubauer, 2008).

Concurrent sentence: A sentence in which two separate sentences may be served at the same time.

time.

Consecutive sentence: A sentence in which two or more sentences must be served sequentially.

Habitual Offender Statutes

Habitual offender statutes (or “three-strikes-and-you’re-out” statutes) are derived from the same punitive atmosphere that led to truth-in-sentencing statutes. These statutes essentially mean that offenders with third felony convictions may be sentenced to life imprisonment regardless of the nature of the third felony. This is a way of selectively incapacitating felons only after they have demonstrated the inability to live by society’s rules. This all sounds fine until we factor in the financial costs of these sentences. Few of us would be against the lifetime incarceration of seriously violent offenders, but many states include relatively minor nonviolent crimes in their habitual offender statutes. For instance, the U.S. Supreme Court upheld the life sentence of a felon under Texas’s habitual offender statute even though the underlying felonies involved nothing more serious than obtaining a total of less than \$230 over a 15-year period by false pretenses (fraudulent use of a credit card and writing bad checks) in three separate incidents (*Rummel v. Estelle*, 1980). Very few of us would consider this a just sentence, and apart from the disproportionate nature of the sentence, the cost to the taxpayers of Texas of keeping Rummel in custody is many thousand times greater than the \$230 he fraudulently obtained.

Habitual offender statutes: Statutes mandating that offenders with third felony convictions be sentenced to life imprisonment regardless of the nature of the third felony.

Ethical Issue:

What Would You Do?

You are a prosecutor in a state with a strict three-strikes law. You have been assigned the case of 46-year-old Billy Banks, who has been arrested and

What Would You Do?

You are a prosecutor in a state with a strict three-strikes law. You have been assigned the case of 46-year-old Billy Banks, who has been arrested and charged with burglary. Billy has two previous felony convictions—one for auto theft and a previous burglary conviction—although you know he has committed many other crimes. Billy shoplifted merchandise worth \$145 from a local department store. This amount is low enough to charge Billy with a misdemeanor petty theft, but because he admitted to entering the store with the express purpose of shoplifting, he was charged with a burglary, which is defined as “the unlawful entry of a structure to commit a felony or theft.” What are the pros and cons of charging Billy under the three-strikes law? And with what crime would you charge him?

A life sentence still carries with it the possibility of parole, but some life sentences are imposed as **life without parole (LWOP)**. Such sentences may seem popular with the public at large until taxpayers get the bill. There were 206,268 serving LWOP and what the Sentencing Project calls “near life” sentences in 2016 (The Sentencing Project, 2017). LWOP sentences are usually imposed on those convicted of murder, but habitual property offenders have also been given such sentences. Long-term incapacitation of violent and/or habitual offenders is sound policy, but how much time is enough? In one large-scale study, only one fifth of “lifers” who were released after long stays (15–30 years) in prison were rearrested within 3 years, compared with two thirds of nonlifers who were released (Mauer, King, & Young, 2004). Old age is the best “cure” for criminal behavior we have, so perhaps releasing lifers after 20 to 30 years of imprisonment is both humane and fiscally responsible. Given the ever increasing medical needs of people as they age, older inmates add a highly disproportionate financial burden on taxpayers.

Life without parole (LWOP): A life sentence with the additional condition that the person never be allowed parole.

OTHER TYPES OF SENTENCES: SHOCK, SPLIT, AND NONCUSTODIAL SENTENCES

LO 4.3 Identify other sentencing options and how they are applied.

Judges have many sentencing options open to them besides straight imprisonment. The fact is that more than 90% of sentences imposed in our criminal courts do not involve imprisonment (Neubauer, 2008). One type of sentence that does include imprisonment is shock incarceration, also called **shock probation**. This type of sentence is used to literally shock offenders into going straight by exposing them to the reality of prison life for a short period, typically no more than 30 days, followed by probation. Shock probation is typically reserved for young, first-time offenders who have committed relatively serious felonies but who are considered redeemable.

Shock probation: A type of sentence aimed at shocking offenders into going straight by exposing them to the reality of prison life for a short period followed by probation.

Split sentences are sentences that require felons to serve brief periods of confinement in a county jail prior to probation placement. Jail time may need to be served all at once or spread over a certain period, such as every weekend in jail for the first year of probation placement. This is designed to show offenders that jail is a place to stay away from and thus to convince them that it would be a good idea to abide by all the conditions imposed by the court. Another form of split sentence is work release, whereby a person is consigned to a special portion of the jail on weekends and nights but is released to go to work during the day. Thus, these mainly noncustodial sentences typically mean a probation sentence coupled with certain conditions that must be followed in order to remain in the community. The conditions may involve such things as paying fines, paying restitution, attending drug and/or alcohol treatment programs, doing community service, remaining gainfully employed or looking for work, and any

to remain in the community. The conditions may involve such things as paying fines, paying restitution, attending drug and/or alcohol treatment programs, doing community service, remaining gainfully employed or looking for work, and any number of other more specific conditions. These different noncustodial sentences and probation conditions will be discussed more fully in the chapters on probation, parole, and treatment.

Split sentences: Sentences that require convicted persons to serve brief periods of confinement in a county jail prior to probation placement.

Victim Impact Statements

In 1982, President Ronald Reagan created the President's Task Force on Victims of Crime. One of the outcomes of this was the inclusion of victim impact statements (VISs) at sentencing. A **victim impact statement** allows persons directly affected by the crime (or victims' survivors in the case of murder) to inform the court of the personal and emotional harm they have suffered as a result of the defendant's actions and, in some states, to make a sentencing recommendation. VISs are typically incorporated into PSIs written for the court by probation officers. The opportunity to provide input into the sentencing decision and the recognition that the harm is suffered by individuals, not the state, is considered a valuable aid in the emotional recovery of victims and may even aid the rehabilitation of some defendants by forcing them to confront the harm caused by their actions (Walsh, 1986).

Victim impact statement: A statement made by persons directly affected by a crime (or victims' survivors in the case of murder) to inform the court of the personal and emotional harm they have suffered as a result of the defendant's actions and, in some states, to make a sentencing recommendation.

VISs have been challenged as prejudicial and a return to a more conservative punitive stance toward punishment because such statements can lead to sympathy for the victim and hostility toward the defendant (Paternoster & Deise, 2011). However, in *Payne v. Tennessee* (1991), the Supreme Court upheld the constitutionality of VIS testimony in the sentencing

because such statements can lead to sympathy for the victim and hostility toward the defendant (Paternoster & Deise, 2011). However, in *Payne v. Tennessee* (1991), the Supreme Court upheld the constitutionality of VIS testimony in the sentencing phase of a trial, and all 50 states now include the use of VISs in the form of written or oral statements at sentencing. But how influential are they in terms of the actual sentence imposed? Overall, the evidence is ambiguous, although in capital cases, in which juries rather than judges decide the sentences, they seem to be influential (Paternoster & Deise, 2011). Research in noncapital cases tends to show that VISs actually have little effect on sentencing decisions after accounting for the effects of legally relevant variables (seriousness of crime and prior record) (Walsh, 1986). This sometimes leads to resentment and dissatisfaction with the sentencing process when victims (or their survivors) believed their recommendations would carry more weight than they did (Meredith & Paquette, 2001).

PROBLEM-SOLVING COURTS

LO 4.4 Explain the role of problem-solving courts.

Problem-solving courts are alternatives to traditional criminal courts that cannot adequately address the problems of offenders with special needs and other issues such as drug, alcohol, domestic violence, and mental health problems. These courts originated during the late 1980s to early 1990s in response to burgeoning rates of incarceration, the financial costs of incarceration, the realization that many offenders needed treatment rather than jail or prison, and the woeful inability of the social services system to provide that treatment. The traditional criminal courts have long seen the same individuals with the same problems recycle through them time after time. Problem-solving courts are designed to address the underlying causes of a person's antisocial behavior under the assumption that it will cease or diminish with the alleged cause under control. These courts largely suspend the adversarial approach to justice in the interests of achieving a therapeutic outcome. In other words, the judge, prosecutor, and defense attorney are supposed to work together collegially along with treatment specialists and supervising probation or parole officers to achieve a common goal: the rehabilitation of the offender. These courts thus promote outcomes aimed at benefiting offenders, victims, and society as a whole by both saving jail and prison costs and

goal: the rehabilitation of the offender. These courts thus promote outcomes aimed at benefiting offenders, victims, and society as a whole by both saving jail and prison costs and minimizing the probability of reoffending. Problem-solving courts thus are novel responses to deal with problems that affect the probability of further criminal behavior. According to the Bureau of Justice Assistance (2013), problem-solving courts are characterized by the following:

Problem-solving courts: Alternatives to traditional criminal courts that cannot adequately address the problems of offenders with special needs and other issues such as alcoholism and mental health problems.

- *Focus on outcomes:* Problem-solving courts are designed to provide positive case outcomes for victims, society, and offenders (e.g., reducing recidivism, creating safer communities).
- *System change:* Problem-solving courts promote reform in how the government responds to problems such as drug addiction and mental illness.
- *Judicial involvement:* Judges take a more hands-on approach to addressing problems and changing behaviors of defendants.
- *Collaboration:* Problem-solving courts work with external parties to achieve certain goals (e.g., developing partnerships with mental health providers).
- *Nontraditional roles:* These courts and their personnel take on roles or processes not common in traditional courts. For example, some problem-solving courts are less adversarial than traditional criminal justice processing.
- *Screening and assessment:* Use of screening and assessment tools to identify appropriate individuals for these courts is common.
- *Early identification of potential candidates:* Use of screening and assessment tools to determine a defendant's eligibility for a problem-solving court usually occurs early in a defendant's involvement with criminal justice processing.

Drug Courts

Drug courts are by far the most common form of problem-solving court in the United States. In response to the growing drug problem, the first drug court was established in Miami-Dade County, Florida, in 1989. Twenty years later, there were 2,037 drug courts active in all 50 states, growth that suggests there is much that is positive about drug courts (Mackin, Lucas, & Lambarth, 2010). A referral to a **drug court** requires the offender to be involved in an intensive treatment program that lasts 2 years. Participants typically have pleaded guilty to nonviolent drug-related felony charges. Under the supervision of the judge, probation officers, and other caseworkers, participants attend counseling groups and 12-step meetings, regularly appear before a judge, and must submit to random urine testing. If a participant successfully completes the program, in nearly all jurisdictions the criminal charges will be dismissed. The U.S. Department of Justice (Ashcroft, Daniels, & Herraiz, 1997) provided the 10-component model presented below for state and county agencies implementing their drug court systems:

Drug court: A special sentence for drug-related nonviolent offenders who must then complete an extensive drug treatment program.

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

The drug court processes from arrest to final outcome (either graduation or termination and incarceration) are graphically shown in Figure 4.1 from the Albany, New York, drug court. The first stage of the process is a referral to the drug court, typically from an offender's attorney. With the receipt of the referral, members of the drug court team review the applicant's criminal history and police reports relevant to the current offense and other pertinent information. Violent offenders and offenders who have previously committed the same offense or who have failed other treatment programs before will not be accepted into most drug court programs. A standardized form containing all the gathered information is sent to members of the drug court team for review at a weekly staff meeting. After reviewing a case, members of a drug court team vote to accept or reject an offender's application. If the offender is accepted into a program, the case is referred to a probation officer, who then performs a prescreening interview. The officer will listen to the defendant and observe his or her behavior and attitudes in order to assess the level of desire to change their lifestyle. The officer will provide a rundown of the drug court program and ascertain an offender's willingness to abide fully with the program's guidelines in order to achieve sobriety. Most offenders, it should be understood, lack the personal skills associated with success in any endeavor, so the prospect of participating in an arduous treatment program in which they will be held strictly accountable is often daunting to them. Offenders who, by their words and actions, give the impression that they do not take responsibility for their behavior and have no desire to change will not be accepted.

Description

Figure 4.1 Case Flow From Arrest to Court Termination in the Albany, New York, Drug Court

Source: Adapted from Albany County Judicial

the Albany, New York, Drug Court

Source: Adapted from Albany County Judicial Center,
<http://albanycountyda.com/Bureaus/RevJohnUMillerOR/CommunityProsecution/drugcourtprocess.aspx>

As a result of their frequent interactions during court appearances, it is expected that participants will develop rapport with the judge, who speaks directly to them in an informal way, asking about their progress and either exhorting them to try harder or praising their accomplishments. The judge will also remind them of the obligation to remain drug free and may impose sanctions for ongoing drug use or other behavior that impedes progress toward sobriety. These sanctions may include jail time and/or dismissal from the program, in which case the offender receives the agreed-on prison sentence. The judge will ultimately decide the defendant's fate—graduation or incarceration.

Graduation from drug court takes place with as much fanfare as a typical college graduation ceremony. Commenting on the graduation of 54 drug, DUI (driving under the influence), and veterans treatment court graduates recognized at a ceremony in Tulsa, Oklahoma, Bland (2014) wrote,

Drug Court saved Clark Dagnall's life. In return, the 26-year-old Sand Springs resident took the stage at the program's most recent graduation and promised to pay it forward by helping others. "My goal is just to help the next addict," he told the crowd of graduates' friends and family members. "Maybe I can get through to somebody that nobody else could."

Graduates received certificates of graduation for completing the nearly 2-year program. Bland (2014) also wrote that the graduates who spoke at the ceremony were grateful for the support and guidance they received in the program, and the drug court staff expressed their pride in the graduates. "We watch these individuals transform and rise from the ashes," said Lawrence Gilbert, Action Steps Counseling program coordinator."

Photo 4.2 A judge awards a graduation certificate for a

Photo 4.2 A judge awards a graduation certificate for a drug court program.

AP Photo/The Evansville Courier & Press, Erin McCracken

Note the strong emphasis on interagency cooperation, the provision of services to participants, and the strict monitoring of their behavior. In addition to saving states many millions of dollars in jail and prison costs, drug courts appear to be quite successful in reducing recidivism. For instance, the Baltimore County Juvenile Drug Court outcome analysis (Mackin et al., 2010) estimated that the program saved the county \$8,762 per participant over 24 months because of lower recidivism rates and savings from incarceration. [Figure 4.2](#) provides an illustration of recidivism outcomes for drug court graduates, participants who did not graduate, and a control group consisting of juveniles who fit the criteria for participation. Note that while the likelihood of rearrest increased for all groups over time, the graduates had a lower arrest rate at 24 months than the control group did at 6 months.

Description

Figure 4.2 Comparison of Rearrest Rates for Juvenile Drug Court Participants and Nonparticipants at 6 Through 24 Months After Admittance

Source: Mackin et al. (2010).

Roman's (2013) study of drug courts in 29 different U.S. jurisdictions showed that drug court participants were significantly less likely to test positive for drugs than other probationers (29% vs. 46%) and less likely to be rearrested (52% vs. 62%). Roman also noted that the cost per drug court participant was significantly higher per year (\$15,326) for drug court participants than for comparison probationers (\$7,191), but that was offset by lower costs in other areas such as the costs of further crime and victimization. Overall, the net financial benefit per participant spread over all 29 jurisdictions in Roman's study was \$5,680 compared with control probationers. If there were only 100 participants, this would amount to an average saving of \$1.36 million over 2 years, which is the usual duration of such courts. This is without even considering the emotional costs of criminal victimization. Other

probationers. If there were only 100 participants, this would amount to an average saving of \$1.36 million over 2 years, which is the usual duration of such courts. This is without even considering the emotional costs of criminal victimization. Other studies have found that compared with traditional probation, drug courts reduce overall recidivism by 12.4% to 13.0% for drug-related recidivism (Mitchell, Wilson, Eggers, & MacKenzie, 2012).

A meta-analysis of 201 different studies (Sevigny, Fuleihan, & Ferdik, 2013) found that drug courts reduce jail and prison incarceration by 32%. Putting this in a nationwide perspective, the researchers reported this results in 9,911 fewer incarcerations among the estimated 52,777 annual drug court participants across the United States. However, these lower incarceration rates were offset by the longer sentences imposed on participants who fail. Nevertheless, in addition to saving the states many millions of dollars in jail and prison costs, drug courts appear to be quite successful in reducing recidivism.

SENTENCING DISPARITY, LEGITIMATE AND ILLEGITIMATE

LO 4.5 Assess the issues surrounding sentencing disparity.

Sentencing disparity occurs when there is wide variation in sentences received by different offenders. This disparity is legitimate if it is based on considerations such as crime seriousness and/or prior record, but it is discriminatory if it is not. We think of sentencing disparity as discriminatory if there are differences in punishment in cases in which no rational justification can be found for them. The biggest concern is racial discrimination. There is no doubt that the American criminal justice system has a dark history of racial discrimination, but does this indictment still apply?

Sentencing disparity: Wide variation in sentences received by different offenders that may be legitimate or discriminatory.

African Americans receive harsher sentences on average than white or Asian American offenders, a fact often seen as racist, but is it? ~~Sentencing variation according to race~~ is reasonable

judge. There are few documents as important to the defendant as the PSI. It is used for many other purposes besides sentencing, such as treatment planning, classification to supervision levels in probation and parole departments and prisons, and parole decisions (Walsh & Stohr, 2010). A PSI is usually completed in 30 days or less so that the convicted individual can be sentenced in a timely manner. PSIs are usually written by probation officers, informing the judge of various aspects of the offense for which the defendant is being sentenced as well as information about the defendant's background (educational, family, and employment history), gang ties, substance abuse, character, and criminal history. Because of plea bargaining, judges typically know very little about the circumstances of the offense or the offender. On the basis of this information, officers make recommendations to the court regarding the sentence the offender should receive. Because probation officers enjoy considerable discretionary power relating to how their reports are crafted to be favorable or unfavorable to offenders, many scholars view them as the agents who really determine the sentences that offenders receive (Champion, 2005). Other researchers, however, suggest that the high rate of judicial agreement with officer recommendations reflects an anticipatory effect, whereby officers become adept at "second guessing" a judge's likely sentence for a given case and recommend accordingly (Durnescu, 2008).

Presentence investigation report: Report written by the probation officer informing the judge of various aspects of the offense for which the defendant is being sentenced as well as providing information about the defendant's background (educational, family, and employment history), character, and criminal history.

In Focus 4.1 is an example of a (fictional) PSI containing the usual required information. PSIs come in a variety of lengths, the shortest being a 1- or 2-page short-form report used in misdemeanor cases or less serious "run-of-the-mill" felony cases. For serious or complicated cases, we may see 10- to 15-page reports, although the trend is toward shorter reports. The report given here is an example of a midrange report used for relatively serious crimes, although the trend is for shorter, more concise reports focusing primarily on legally relevant variables. This is, in effect, moving away from individualized justice.

victim impact statements also generally leads to harsher sentences (Haynes, 2011). Political ideology also plays a role, with more conservative “law and order” jurisdictions sentencing more harshly across the board (Ulmer, 2012). Wu and Walsh (2007) found that conservative probation officers recommended harsher sentences (regardless of race) than liberal officers and that judges followed the recommendations of both sets of officers closely. A study of the sentencing practices of 18 Ohio judges found that half of them took no extralegal facts into consideration at all, 5 judges sentenced Black people more leniently, and 4 judges sentenced Black people more harshly (Wooldredge, 2010). The harsh and lenient judges just cancel each other out if researchers look only at the overall record of all judges and ignore individual judges.

One study of more than 46,000 federal defendants in 23 states found no evidence of racial bias after controlling for crime seriousness and prior record (Wang & Mears, 2010), although Jordan and Freiburger (2015) maintained that studies continue to show people of color are sentenced more severely than white people. So, is there racial discrimination involved in sentencing? The short answer is that it depends on the quality of the data, where you look, how hard you look, and even what you expect to find on the basis of your assumptions.

Table 4.1 shows the average length in months of felony sentences in state courts in 2006 broken down by race and gender (Durose, Farole, & Rosenmerkel, 2010). You can see that Black men have longer sentences than white men and that men have longer sentences than women. Also note that for violent offenses, white women receive longer sentences than Black women. However, no conclusions about racial or gender bias can be drawn from the table, because it tells us nothing about how serious each of the crimes was (some robberies, sexual assaults, and assaults are far more vicious than others, for instance), nor does it tell us anything about the criminal histories of the men and women represented in the table.

Table 4.1 Average Length of Felony Sentences in 2006 by Offense, Race, and Gender (in Months)

	Mean Maximum Sentence Length for Persons Who Were:	
	White	Black

	Length for Persons Who Were:			
	White			Black
	Male	Female	Male	Female
Most Serious Conviction Offense				
All offenses	40	25	45	25
Violent offenses	75	52	88	41
Murder/nonnegligent manslaughter	265	225	266	175
Sexual assault	115	72	125	32
Robbery	89	61	101	54
Aggravated assault	42	30	48	29
Other violence	43	55	41	17
Property offenses	31	22	35	23
Burglary	41	29	50	34
Larceny	24	17	23	19
Fraud/forgery	27	22	27	23
Drug offenses	31	22	36	22
Possession	21	17	25	15
Trafficking	20	26	40	27

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In Focus 4.1:

Example of a PSI

Gem County Adult Probation Department

Williamstown, Iowa 74812

Name: Joan Place Judge: Franklin Riley

Indictment No.: CR 6742 Probation Officer: James
Smith

Age: 28 Attorney: William Paley

Race: white

Sex: female Offense: forgery

Marital Status: divorced Conduct (IRC #2908) two
counts

Circumstances of the Offense:

On 8/10/94, Mr. John Smith, security operative for the Omaha Trust Company (OTC), reported to the police that the defendant cashed forged checks in the amount of \$917.00 at various OTC branch banks. These checks were drawn against the account of one Mrs. Patricia DeValera, 4561 Black St. The defendant stole Mrs. DeValera's checks while employed by her as a nurse's aide. Mr. Smith also indicated that the defendant cashed forged checks in the amount of \$575.00 on the account of Mr. Richard Blane, a former boyfriend of the defendant. The total loss to the Omaha Trust bank is \$1,492.00.

Defendant's Version:

The defendant's written statement is reproduced verbatim below: "Took checks filled it out in amount I needed for drugs and signed it. forged a name and

The defendant's written statement is reproduced verbatim below: "Took checks filled it out in amount I needed for drugs and signed it, forged a name and cashed the checks in Aug. of 1994. No, I did not pay back the person. I was so drug dependent that I took my boyfriends checks, Mrs. Devaleras checks too. All I could live for at the time was heroin and alcohol (mainly beer). I'm sorry I did these things, normally I wouldn't of forged the checks if I wouldn't of needed drugs. All I could do was live for drugs. I've been threw the withdrawals of drugs when I put myself in the treatment center on Wilson St." It is noted that the defendant places the blame for her criminal activity on her craving for heroin and alcohol. Her statements of remorse ring rather hollow in light of her new forgery arrest while undergoing presentence investigation. She was arrested on this new charge on 2/22/95 and released on \$1,000 bond (10% allowed). Upon learning of this new arrest, I rearrested her on 2/24/95 and placed her in the county jail, where she has been ever since.

Prior Record:

Juvenile: None known

Adult:

8-18-94 OPD Forgery, 5 counts, amended to one count: present offense

11-6-94 OPD Forgery, 3 counts, pending under CR841234

2-5-95 OPD Forgery, pending

Above record reflects juvenile, OPD, BCI, and FBI record checks.

Present Family Status:

The defendant is the fourth of five children born to Ann and Frank Place. Her father passed away in January of 1991. On 6/17/85, the defendant married one James Fillpot. Mr. Fillpot was described as a heavy drug abuser and is now serving a life sentence on an aggravated murder charge (he was convicted of murdering the defendant's alleged lover). The defendant divorced Mr. Fillpot shortly after his 1989

and making collateral contacts. Some days I have writer's block and take the day off, knowing that I will be more productive on a different day. The flexibility has allowed me to be more productive on a day-to-day basis.

My advice to someone either wishing to study, or now studying, criminal justice to become a practitioner in this career field would be:

If you want to be a presentence investigator, hone your writing skills. Ultimately, although this job is investigative in nature, the report should be the main focus and needs to be well written and detailed. Reports can take between 10 and 12 hours (or more) to complete. Also, you cannot be afraid to ask questions. I have heard some of the craziest stories from criminal defendants, some of which were extremely uncomfortable to hear. Defendants willing to open up and provide details about their lives need an investigator who is not afraid to keep asking questions. Be ready to be surprised on a daily basis! This job is never boring and is different and challenging every day with every different case.

STRUCTURED SENTENCING: SENTENCING GUIDELINES

LO 4.7 Explain the purpose and use of sentencing guidelines.

We saw in Chapter 1 that a major concern of the Classical School of criminal justice was to make the law more fair and equal by removing a great deal of judicial discretion and providing standards set by the legislature for making punishment for equal crimes standard. Prior to 1984, federal judges enjoyed nearly unlimited sentencing discretion as long as they stayed within the statutory maximum penalties. This led to a lot of criticism regarding sentencing disparities and moved Congress to establish the **U.S. Sentencing Commission**. This commission was charged with the task of creating mandatory sentencing guidelines to rein in judicial discretion (Reynolds, 2009). **Sentencing guidelines** are forms containing scales with a set of rules for numerically computing sentences that offenders should receive on the

discretion (Reynolds, 2009). Sentencing guidelines are forms containing scales with a set of rules for numerically computing sentences that offenders should receive on the basis of the crimes they committed and on their criminal records.

U.S. Sentencing Commission: A commission charged with creating mandatory sentencing guidelines to control judicial discretion.

Sentencing guidelines: Scales for numerically computing sentences that offenders should receive on the basis of the crimes they committed and on their criminal records.

Guidelines are devised by federal or state sentencing commissions and provide classifications of suggested punishments on the basis of an offender's scores on those scales. Because guidelines are a set of rules and principles that are supposed to decide a defendant's sentence, they curtail the discretionary powers of judges, as was intended by Congress. Most people view this as a good thing because unbridled discretion can lead to wide sentencing disparities based only on a judge's subjective evaluations and whims. At one extreme we might get "hanging" judges, and at the other end we might get "bleeding heart" judges, so a defendant's fate may depend largely on the temperament or ideology of the judge by whom they have the good luck or bad fortune to be sentenced.

Guidelines thus provide structured predictability to criminal sanctions by taking Aristotle's definition of justice ("treating equals equally and unequals unequally according to relevant differences") and assigning numbers to these relevant differences. The sample guideline in [Figure 4.3](#) illustrates how numbers are assigned to various aspects of a case that are considered relevant to sentencing. The guidelines used by the federal government and some states limit themselves to crime seriousness and prior record, whereas others are more comprehensive and assign points not only for the statutory degree of seriousness of the offense and prior record but also for the amount of harm done; whether the offender was on bail, probation, or parole at the time; prior periods of incarceration; and a number of other factors. These numbers are then applied to a grid at the point at which they intersect, which contains the appropriate sentence.

THE FUTURE OF SENTENCING GUIDELINES

LO 4.8 State factors that may affect the future implementation and use of sentencing guidelines.

As useful as guidelines have proved to be for reducing sentencing disparity and curtailing judicial discretion, their future format and function are by no means ensured. As mentioned above, the federal guidelines are now only “advisory,” meaning that judges can consult them and follow them or not, which has opened the door once again to unwarranted sentencing discrepancies that guidelines were supposed to rein in. The turnabout began with the recognition of the separation of responsibilities of the trial judge and the trial jury. The role of judges is to be finders of law; the role of juries is to be finders of facts. A famous case based on that principle came before the U.S. Supreme Court in 2005 (*United States v. Booker, 2005*).

The circumstances of the case are that Freddie Booker was arrested in 2003 in possession of 92.5 grams of crack cocaine. He also admitted to police he had sold an additional 566 grams. A jury found Booker guilty of possession with intent to sell at least 50 grams, for which the possible penalty ranged from 10 years to life. At sentencing, the judge used additional information (the additional 566 grams and the fact that Booker had obstructed justice) to sentence Booker to 30 years. Booker’s sentence would have been 21 years and 10 months on the basis of the facts presented to the jury and proved beyond a reasonable doubt.

Booker appealed his sentence, arguing that his Sixth Amendment rights had been violated by the judge “finding facts” when that is the proper role of the jury. An earlier federal appeals court had ruled the facts of prior convictions are the only facts judges can “find” as justification for increasing sentencing. In other words, anything other than prior record that is used to increase a criminal penalty beyond what the guidelines call for must be submitted to a jury and proved beyond a reasonable doubt. The Supreme Court agreed with Booker that his sentence violated the Sixth Amendment and sent the case back to district court with instructions either to sentence Booker within the sentencing range supported by the jury’s findings or to hold a sentencing hearing before a jury

Booker that his sentence violated the Sixth Amendment and sent the case back to district court with instructions either to sentence Booker within the sentencing range supported by the jury's findings or to hold a sentencing hearing before a jury (Bissonnette, 2006).

The remedial portion of the Supreme Court's opinion (what can be done to prevent this from happening again?) is much more controversial. The Court held that the guidelines were to be advisory only and therefore no longer binding on judges. However, the Court did require judges to "consult" the guidelines and take them into consideration, but there is no way of ensuring that judges comply. John Ashcroft, the U.S. attorney general at the time, called the decision "a retreat from justice," and Congressman Tom Feeney decried that "the extraordinary power to sentence" was now afforded to federal judges who are accountable to no one and that the decision "flies in the face of the clear will of Congress" (Bissonnette, 2006, p. 1499). In fact, Booker was resentenced by the same judge to the same 30-year sentence he originally received. Because the sentencing guidelines had then become merely advisory, the judge did not need to further justify his sentence, because it was within the range of the statutorily defined penalty. The Court's ruling on guidelines currently applies only to the federal system.

Comparative Corrections:

Sentencing in Comparison Countries

Sentencing in our four major comparison countries differs radically. The most brutal sentences are handed out in Saudi Arabia. Sentences are fixed and unalterable for crimes called *hudud* crimes because they are considered crimes against God as outlined in the Koran. These crimes (and their penalties) are adultery (death), fornication (whipping—80 lashes), false accusation of any of the foregoing crimes (whipping—100 lashes), alcohol consumption (whipping—varies; death is possible after a third offense), apostasy—conversion from Islam to some other faith (death), theft (amputation of hand), and robbery (amputation of alternate-side hand and foot). Saudi criminal courts are religious courts, and judges have practically free rein in sentencing in non-hudud

robbery (amputation of alternate-side hand and foot). Saudi criminal courts are religious courts, and judges have practically free rein in sentencing in non-hudud crimes and do not follow any uniform legalistic guidelines.

For crimes known as *qisas* crimes, the penalties are imposed in a literal “eye for an eye, and a tooth for a tooth” fashion but can be forgiven on the payment of “blood money” to the victim or the victim’s survivors. For instance, a 14-year-old was sentenced to be surgically paralyzed because he had stabbed and paralyzed a companion in a fight. However, the boy’s mother was able to raise enough blood money to spare him that fate (Knowles, 2013). The least serious crimes under Islamic law are called *ta’zir* (rehabilitation) crimes, which include consumption of pork, bribery, provocative dress, wifely disobedience, and traffic offenses. Penalties for these offenses are entirely discretionary and may include a dressing down by the judge, a short prison sentence, or some form of light corporal punishment, but sometimes a death sentence can be imposed (Walsh & Hemmens, 2014).

China is definitely tough on crime, albeit more lenient than Saudi Arabia. Chinese sentences are classified as community control, criminal detention, fixed-term imprisonment, life imprisonment, and the death penalty. Community control is imposed for minor offenses and is analogous to probation. Offenders under control continue to work but are continually under surveillance by the police and under the informal control of neighborhood committees.

Criminal detention is analogous to a jail sentence in the United States where offenders are sent to jail for a short time for committing relatively minor crimes. Offenders may be granted permission to go home 1 or 2 days each month and may be paid for work, which makes the sentence like a work release sentence in the United States. Fixed-term imprisonment ranges from 6 months to 15 years, and the step after that is life imprisonment. Individuals sentenced to fixed-term or life imprisonment are subjected to long periods of hard labor as long as they are physically able. The most serious sentence is the death, we will discuss

or life imprisonment are subjected to long periods of hard labor as long as they are physically able. The most serious sentence is one of death; we will discuss this in a later chapter.

In 2008, the Chinese courts introduced sentencing guidelines with the intention of introducing uniformity in sentencing. These guidelines contain the same criteria for determining sentences as do American guidelines and are mandatory (judges must follow them). Curiously, for the harshest of sentences—life imprisonment and death—judges retain full sentencing discretion (Chen, 2010).

Before its exit from the European Union (EU), the United Kingdom was bound by the EU Charter of Fundamental Rights, which demands “proportionality” in criminal sentencing (Albers et al., 2013). However, national governments retain a margin of discretion in such matters, and the United Kingdom now has full control over its own penal policies. There are four types of sentences in England and Wales: discharge, fines, probation, and prison. Sentences depend on whether the offenses were indictable or summary offenses, which are analogous to the felony/misdemeanor distinction in the United States. A convicted person may be discharged conditionally or absolutely for minor offenses if the court decides not to impose any punishment. Fines are the most common sentence imposed in magistrates’ courts (analogous to municipal courts that deal with misdemeanors in the United States). Prison sentences for serious offenses are of fixed terms from 1 year to life and are passed down by the Crown Courts (analogous to U.S. district courts). There is no death penalty in the United Kingdom. The courts in England and Wales use a grid-based guideline much like those in fashion in the United States, and Parliament has mandated that the “courts ‘must follow’ definitive guidelines rather than merely ‘have regard to’ them” (Roberts, 2011, p. 997). PSIs are also written for cases in which probation or prison is being considered.

According to the official French government website (Service Public Française, 2013), offenses in France are divided into *crimes*, *délits*, and *contraventions*.

Crimes are the most serious offenses. They are tried in assize court with judges and juries and are

in which probation or prison is being considered.

According to the official French government website (Service Public Française, 2013), offenses in France are divided into *crimes*, *délits*, and *contraventions*. *Crimes* are the most serious offenses. They are tried in assize court with judges and juries and are punishable by 15 to 30 years in prison or, in exceptional cases, by life in prison. Examples of *crimes* are murder and rape. A *délit* is an offense punishable by imprisonment from 2 months to 10 years and is tried in a correctional court. Although *délits* are classified as “second-tier” crimes, they are very serious offenses, such as robbery, aggravated assault, and sexual assault. *Délits* can become crimes with aggravating circumstances. *Contraventions* are minor offenses tried in police courts and punishable only by fines up to 3,000 euros (about \$4,000). There is no death penalty in France.

Because the termination of a French trial results simultaneously in a verdict and a sentence, a PSI is not necessary. All the information typically included in a PSI is already known to the sentencing panel (typically, three professional judges and nine laypersons) because the investigatory process in France is more thorough than in the Anglo-American common law tradition; thus, the character of the defendant and all the relevant personal information regarding his or her background is well known (Walsh & Hemmens, 2014). Nor are there sentencing guidelines other than statutory penalties, leaving judges with excessive discretion that can lead to serious inequalities in sentencing (Padfield, 2011).

SUMMARY

LO 4.1 Explain how modern sentencing engages Aristotle’s notion of justice.

- Sentencing is a postconviction process in which the courts implement one or more of the punitive philosophies: retribution, deterrence, incapacitation, or rehabilitation. Sentencing decisions should be in accordance with justice.

LO 4.2 Describe the different types of sentencing and their rationales.

- There are three major sentencing models: indeterminate (a range of possible years), determinate (a specific number of years), and mandatory (can exist under either of the above models but means that the person must be sent to prison; probation is not an option).
- Truth-in-sentencing laws have led to longer sentences, a stronger move to determinate and mandatory sentencing, and statutes such as habitual offender statutes.

LO 4.3 Identify other sentencing options and how they are applied.

- Judges have additional options for sentencing dependent upon the offender and circumstances related to the crime. Shock probation is a type of sentence used to literally shock offenders into going straight by exposing them to the reality of prison life for a short period, typically no more than 30 days, followed by probation. Split sentences require felons to serve brief periods of confinement in a county jail prior to probation placement.

LO 4.4 Explain the role of problem-solving courts.

- Problem-solving courts are alternatives to traditional criminal courts that cannot adequately address the problems of offenders with special needs and other issues such as drug, alcohol, domestic violence, and mental health problems.
- Sentencing to a drug court is becoming increasingly popular in the United States.

LO 4.5 Assess the issues surrounding sentencing disparity.

- Sentencing disparity—sentences not accounted for by legally relevant variables—is a major concern in the criminal justice system. A big concern is whether African

- Sentencing disparity—sentences not accounted for by legally relevant variables—is a major concern in the criminal justice system. A big concern is whether African Americans' more severe sentences are accounted for by their greater involvement in crime or by racism. The sentences imposed for crack versus powder cocaine possession have been a contentious issue because of racial differentials in the possession and sale of crack versus cocaine.

LO 4.6 Identify the purpose of presentence reports and sentencing guidelines as well as the contentious issues surrounding them.

- Efforts have been made to “individualize” justice by providing judges with presentence investigation reports, written by probation officers, that contain many factors about the people the judges are to sentence. A big controversy involving these reports is whether the defense should be able to view them.

LO 4.7 Explain the purpose and use of sentencing guidelines.

- Sentencing guidelines are designed to eliminate sentencing disparity by submitting a person's crime seriousness and prior record (in some states additional information is included) to a scoring system. The person is then supposed to be sentenced the same way as every other person who receives the same score.

LO 4.8 State factors that may affect the future implementation and use of sentencing guidelines.

- Certain legal problems with sentencing under guidelines moved the Supreme Court to rule that the federal guidelines, which were previously mandatory, were now to be merely advisory. This opened up the door once again for wide levels of judicial discretion and thus for sentencing disparity.

Key Terms
