

SENTENCING POLICY IN U.K. AND U.S.A.

INTRODUCTION

Sentencing serves the purposes of crime reduction and reparation as well as punishment. It is important to establish how much sentencing can be expected to contribute to crime reduction. The available evidence suggests that greater support for reform and rehabilitation, within the appropriate “punitive envelope” of the sentence, to reduce risks of reoffending, offers the best prospects for improved outcomes. Even here reduction, rather than immediate elimination, of recidivism is the realistic target. These conclusions support the need for wider crime reduction strategies, outside sentencing, aimed at preventing offending in the first place, and increasing the likelihood that those who do commit crime will be caught and brought to justice speedily.¹

Sentencing, and the framework within which it operates, need to earn and merit public confidence, but this is a complex relationship, and not one in which sentences can simply be “driven before the wind” of apparent public mood, regardless of the principles that need to govern sentencing. More can and should be done to improve public understanding of sentencing, and sentences’ understanding of public opinion. Their view’s assessment of public views on how sentencing should operate has informed its recommendations for a new framework, especially those on persistent offenders, and the importance of supporting and strengthening work aimed at leading sentenced offenders away from lives of crime.²

At its roots, sentencing contributes to good order in society. It does so by visibly upholding society’s norms and standards; dealing appropriately with those who breach them; and enabling the public to have confidence in its outcomes. The public, as a result, can legitimately be

¹ REPORT OF A REVIEW OF THE SENTENCING FRAMEWORK FOR ENGLAND AND WALES , July 2001 at p. II

²*Ibid*

expected to uphold and observe the law, and not to take it into their own hands. To achieve this, there must be confidence in the justice of the outcomes, as well as in their effectiveness. Achieving a satisfactory level of public confidence is therefore an important goal of sentencing, and the framework for sentencing needs to support that goal.³

Sentencing in England and Wales:

Sentencing in England and Wales refers to a bench of magistrates or district judge in a Magistrate's Court or a judge in a Crown Court passing sentence on a person found guilty of a criminal offence. In deciding the sentence, the court will take into account a number of factors: the type of offence and how serious it is, the timing of any plea of guilty, the defendant's character and antecedents, including his/her criminal record and the defendant's personal circumstances such as their financial circumstances in the case of a fine being imposed.

In England and Wales, the types of sentence that may be imposed for a particular offence are specified by statute. There are four main types of sentence: discharges, fines, community sentences and custodial (or prison) sentences. If a court convicts a defendant but decides not to impose any punishment, he/she is discharged conditionally or absolutely. Discharges may be ordered for any offence where the penalty is not fixed by law, although in practice they are used in the least serious offences. Fines are the most common sentence.

For offences considered to be "serious enough", a range of community sentences is available to the court. Community sentences place 'requirements' on the offender - things they must do, or not do, in the community. Requirements can include: doing unpaid work, getting treatment for an addiction (for example drugs), or preventing a defendant from going to a specific place or area. For those offences considered so serious that a non custodial sentence cannot be justified, a prison sentence may be imposed, either immediate or suspended. The maximum prison sentence in the magistrates' court is six months (which may be imposed consecutively up to 12 months for two triable either-way offences). There is also a range of ancillary sentences available to the courts, such as compensation orders, costs, restraining orders and disqualification orders, depending on the type of offence.

³ REPORT OF A REVIEW OF THE SENTENCING FRAMEWORK FOR ENGLAND AND WALES , July 2001 at p. 1

For the most serious offences such as murder, the sentence is fixed as life. Some offences carry minimum sentences, for example, certain firearms offences, "three strikes and you're out" burglaries, using someone to mind a weapon, or those committed by dangerous offenders. There are different sentencing provisions for offenders aged ten to seventeen years old, and some modified provisions for those in the 18-20 age range.

The main statute on sentencing is the Criminal Justice Act 2003, which created a framework for sentencing decisions in the courts.

The main statute on sentencing is the Criminal Justice Act 2003, which created a framework for sentencing decisions in the courts. Although the Act sets out a number of factors that the court must take into account when passing sentence, the weight to be attached to each factor in a case is a matter for the sentencer. By specifying maximum sentences for particular offences, Parliament indicates its view of the seriousness of the offence. The Sentencing Council helps to refine this process by providing guidance, including sentencing guidelines which suggests a sentencing level in each case. The sentencer is required to consider the guidelines and, if they decide to impose a different type of sentence, to give their reasons for doing so⁴

Sentencing in India squarely fall within the common law jurisdictions: courts are provided with wide discretion to determine a fit sentence, Sentencing in India falls squarely within the tradition of common law with appellate review constituting the only institutional mechanism to promote consistency, fairness and principled sentencing. Until relatively recently, this arrangement existed in every common law country except the United States, where formal, numerical guidelines were introduced in the late 1970s.⁵ The US guidelines are usually in the form of a two dimensional sentencing grid, with the dimensions being crime seriousness and criminal history. Each grid contains a justify "departures", i.e., sentences outside the range. The compliance requirement narrow range of sentence length and courts must sentence within this range - or is that "The sentencing judge must find, , and record, substantial and compelling reasons why the

⁴ *Parliament, House of Commons Justice Committee*. 2 July 2009. Paragraph 21. Retrieved 8 August 2011. available at <http://www.legislation.gov.uk>

⁵ Minnesota was the first state to introduce presumptively-binding sentencing guidelines; see R. Frase, *Sentencing Guidelines in Minnesota, 1978-2003*, in *Crime and Justice* (M. Tonry ed., 2005

presumptive guidelines sentence would be too high or too low in a given case.⁶ , Guidelines have proliferated in that country and now can be found in most states and at the federal level.

Aims of sentencing

Section 142 of the Criminal Justice Act 2003⁷ of the Criminal Justice Act 2003 sets out five purposes of sentencing, to which any court dealing with an offender must have regard:

- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public
- the making of reparation by offenders to persons affected by their offences

This is not intended to be a hierarchical order. The Sentencing Council has stated that “the Criminal Justice Act 2003 does not indicate that any one purpose should be treated as more or less important than another. In an individual case, any or all of the purposes may be relevant to a certain degree and it will be for the judge or magistrate to decide how they apply.”

These considerations do not apply to fixed sentences, minimum sentences or certain orders imposed under the Mental Health Act 1983.

Purposes of sentencing⁸

(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing—

- (a) .the punishment of offenders,
- (b). the reduction of crime (including its reduction by deterrence),
- (c). the reform and rehabilitation of offenders,
- (d). the protection of the public, and
- (e). the making of reparation by offenders to persons affected by their offences.

⁶ Minnesota Sentencing Commission, Minnesota Sentencing Guidelines and Commentary (2010).

⁷ Criminal Justice Act 2003 <http://www.legislation.gov.uk>

⁸ <http://www.legislation.gov.uk/ukpga/2003/44/section/142>

(2). Subsection (1) does not apply—

(a). in relation to an offender who is aged under 18 at the time of conviction,

(b). to an offence the sentence for which is fixed by law,

(c). to an offence the sentence for which falls to be imposed under a provision mentioned in subsection (2A)], or

(d). in relation to the making under Part 3 of the Mental Health Act 1983 (c. 20) of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.

The provisions referred to in subsection (2)(c) are—

(a). section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons);

(b). section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences);

(c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon);

(d). section 110(2) or 111(2) of the Sentencing Act (minimum sentence for certain drug trafficking and burglary offences);

(e). section 224A of this Act (life sentence for second listed offence for certain dangerous offenders);

(f). section 225(2) or 226(2) of this Act (imprisonment or detention for life for certain dangerous offenders);

(g). section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentence in certain cases of using someone to mind a weapon).

(3). In this Chapter “sentence”, in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence; and “sentencing” is to be construed accordingly.

Structured Sentencing in England and Wales

In 1998, the Crime and Disorder Act created a statutory body to devise sentencing guidance for the Court of Appeal. The Sentencing Advisory Panel issued its first guideline in 1999, and further guidelines were issued over the next decade.⁹ In 2009, sweeping reforms to the sentencing guideline arrangements were made, and these changes are the subject of the rest of this article. Sentencing in England and Wales entered another era in 2010 as a result of reforms introduced by the Coroners and Justice Act 2009. A new statutory body, the Sentencing Council for England and Wales, headed by Lord Justice Leveson, replaces two previous organizations, the Sentencing Advisory Panel and the Sentencing Guidelines Council. The creation of a single guidelines authority will undoubtedly promote more effective development and dissemination of guidelines. A great deal has changed as a result of the latest legislation - for example, the Sentencing Council has a significantly wider range of duties than its predecessors (see below). These reforms are a creation of the Coroners and Justice.

Recent Developments

The reforms introduced by the Coroners and Justice Act 2009 may be traced to two recent developments. First, the high and rising prison population in England and Wales prompted the government to commission a review of the use of imprisonment and of sentencing guidelines.¹⁸ The second development was a Working Group which recommended a revamp of the current arrangements rather than adoption of a completely new system of guidelines.¹⁹ US-style sentencing grids were rejected by the Sentencing Commission Working Group as being inappropriately restrictive for Sentencing Commission Working Group as being inappropriately restrictive for sentencing in the country.

Duties of the Sentencing Council

Sentencing guidelines authorities around the world have functions and responsibilities far beyond providing guidance for courts, and the English Council is no exception. The Coroners and Justice Act 2009 imposes a wide range of duties on the new Council in addition to the obvious function of producing guidelines. The Council also has to publish a resource assessment of, as well as monitor the operation and effects of its guidelines. In addition it must draw conclusions about the factors which influence sentences imposed by the courts, the effect of the

⁹ A. Ashworth and M. Wasik, *The Story of the Panel and Council*, in Sentencing Guidelines Council, Annual Report, 2009- 2010, available at <http://www.sentencingcouncil.org.uk> (2010).

guidelines on consistency in sentencing and the effect of the guidelines on public confidence in the criminal justice system. Promoting public confidence is likely to be a priority for the new Council. A number of commentators²⁰ regard this as a central function of a sentencing guidelines authority. It has been argued that sentencing councils and commissions need to do more than simply devise and distribute guidelines - they have to be promoted to stakeholders in the field of sentencing as well as to the general public.

Nature of the English Sentencing Guidelines

The guidelines are designed to provide courts with guidance regarding the nature and severity of sentence - but without unduly restricting a court's ability to impose a fit sentence. The Coroners and Justice Act 2009 introduced changes to the requirements for courts with respect to sentencing guidelines. The critical element of any sentencing guideline scheme is the degree of constraint imposed upon courts. A rigid system prevents courts from sentencing outside a specific range, unless exceptional circumstances justify a departure. Yet if the guidelines adopt a very relaxed approach to sentencing outside their ranges, consistency of approach in sentencing is hard to achieve. In evaluating the recent changes to the compliance requirement, it may be helpful to consider a specific guideline. summarizes the definitive guideline ranges for robbery in England and Wales. As with many offences for which definitive guidelines exist, this one is divided into three sub-categories based on crime seriousness.

Category of R	Starting point	sentence
Threat or use of minimal force and removal of property	1 year custody	Up to 3 years custody
A weapon is produced and used to threaten, and/or force is used resulting in injury to the Victim	4 year custody	Up to 2-7 years custody

Previous Statutory Compliance Requirement:

Duty of a Court at Sentencing Until 2009, the compliance requirement in England and Wales was the following: courts were directed that in sentencing an offender, they " must have regard to any guidelines which are relevant to the offender's case " as per section 172(1) of the Criminal Justice Act 2003. In addition, section 174(2) of the same Act stated that: "Where guidelines indicate that a sentence of a particular kind , or within a particular range ; would normally be appropriate for the offence and the sentence is of a different kind , or is outside that range , state the court's reasons for deciding on a sentence of a different kind or outside that range In short, a court simply had to consider ("have regard to") the Council's guidelines and to give reasons in the event that a "departure" sentence was imposed. D. The new test for compliance (duty of a court at sentencing) in England and Wales

The sentencing process

The court is required to make two principal decisions: the type of sentence and its length (or, in the case of a fine, the amount). The court will first consider the following factors: The seriousness of the offence Such facts as whether the offence was committed on bail for other offences, or whether the defendant is subject to recall to prison or serving a community sentence will usually be highly relevant as aggravating the current offence. This information may reveal underlying issues, such as a drug problem. In motoring cases, previous endorsements on the driving record can have consequences, such as a period of disqualification under the "totting-up" rules.¹⁰ The court will consider the range of sentence as recommended by the sentencing guidelines, and then have regard to the details of each offence in order to assess its seriousness. This involves assessing the aggravating and mitigating features of the offence. Any hostility based on racial, religious, disability or sexual grounds demonstrated in the commission of the offence will be considered as an aggravating feature.¹¹ For example, the use of a weapon in an assault is an aggravating feature, or the fact that a person is in a position of trust if he/she commits an offence of theft.¹²

¹⁰ *Magistrates' Association*. Retrieved 14 August 2011.

¹¹ "[The Criminal Justice Act 2003 c. 44 Part 12 Chapter 1 Matters to be taken into account in sentencing Section 143](#)". Legislation.gov.uk. dated 8 August 2011.

¹² "[The changing structures for sentencing guidelines](https://publications.parliament.uk/pa/cm200809/cmselect/cmjust/715/71505.htm)". Parliament. dated 14 August 2011. available at <https://publications.parliament.uk/pa/cm200809/cmselect/cmjust/715/71505.htm>

The defendant's circumstances

The defendant's character, his previous convictions (most relevant will be those for similar offences) and any personal mitigation, as expressed by the defendant's advocate or (if unrepresented) by the defendant in person. An early guilty plea will go towards reducing the sentence—this can result in a discount in up to a third of the sentence, depending when the plea is entered. The defendant's personal circumstances will also be considered. His/her financial circumstances will be highly relevant when a fine, costs or compensation is considered because the court has a duty under section 164 of the Criminal Justice Act 2003 to take these into account when fixing the overall amount.¹³

Pre-sentence reports

In the event of the court considering either a community or a custodial sentence, it can order the offender(s) to have a pre-sentence report taken and prepared by the Probation Service for the court date. The court will have this done because it provides the court with the additional information about the defendant and their circumstances, the risk of re-offending and any personal issues likely to affect the sentencing, e.g. a drug addiction. Psychiatric report may be ordered in appropriate cases. Short reports can be prepared on the day, otherwise the usual time for obtaining a pre-sentence report is three weeks.¹⁴

Passing sentence

After taking into account all the relevant information, and fixing the sentence accordingly, the court will announce the sentence in open court, addressing the defendant directly and giving reasons for the decisions. Ancillary orders such as costs and disqualification will also be announced at this time.

Appeals

There is a right to appeal from the magistrates' court to the Crown Court within 21 days. Defendants who have received immediate prison sentences may apply for bail on lodging notice of appeal, but the decision to grant bail is entirely within the magistrates' discretion.

Ancillary Power of the court

¹³ibid

¹⁴id

The courts can make orders which are ancillary to the main sentence. They are aimed at compensating victims of offences and/or ensuring that an offender does not benefit from his or her offences

Compensation and restitution orders

The courts can make an order that the offender pay a sum of money to his victim in compensation. There is a presumption that the court will make an order in an appropriate case since reasons must be given if no order is made. There is now NO upper limit on the maximum compensation that can be imposed in the Magistrates' Court (except for juveniles, where it is £5,000 per offence). In the event that the offender still has the stolen property the court will make a restitution order for the return of the goods to the victim.

Disqualification from driving

Where an offender who is charged and convicted with a driving offence, the courts have the power to disqualify the offender from driving for a certain length of time, which will depend on the type and severity of the offence. There is a mandatory minimum 12 months for drink-driving offences. For previous drink-driving convictions within the preceding ten years, the minimum period of disqualification is three years. The courts also have the power to disqualify offenders for any offence where a vehicle was used in the commission of the offence, for example using a car to commit burglaries in rural areas.

Deprivation and forfeiture orders

The court can order an offender to be deprived of property he has used to commit an offence. A person convicted of a drink-driving offence can be deprived of his or her vehicle. The Proceeds of Crime Act 1995 also gives the courts the power to take from criminals all profits from a crime up to six years before conviction.

Young offender Sentence

The term "young offender" includes all offenders under the age of 21. However, those in the 18 to 21 (inclusive) age group are generally subject to the provisions of the adult court, although in the case of custody, they are sentenced detention in a young offenders' institute rather than imprisonment. There are considerable variations in the different sentences available for those under 18, under 16, under 14 and under 12. Offenders under 18 are normally dealt with in the

youth court. In a case where a youth is jointly charged with an adult, they will both appear before the adult court, although that court may choose to remit the youth to the youth court for sentencing.

Young offenders' institutions

A sentence of detention in a young offenders' institution (or YOI) is available to the court in respect of those between the ages of 15 and 21 years (inclusive) who have committed imprisonable offences. The relevant provisions are contained in the Criminal Justice Act 1982, which introduced the sentence to replace borstal training. YOI's are managed by the Prison Service. The term of detention is up to the maximum allowed for adult imprisonment for the relevant offence, and the same custody threshold ("so serious") applies as in the case of the adult court. The minimum period of detention is 21 days.

Detention and training orders

This sentence was implemented by the Crime and Disorder Act 1998. for offenders aged 12 to 17 years (inclusive) who are persistent offenders or commit serious offences. The sentences will be between four months and two years, with part of the sentence being served in custody and part half under supervision the community. The term must be specified as four, six, eight, ten, twelve, eighteen or twenty-four months. The "youth offending team" (YOT) will draw up a plan of supervision which the offender is required to meet upon his release from custody - failure to do so may result in his being brought back to court and returned to detention. Supervision may be under an officer of the YOT, a probation officer or social worker.

Detention for serious crimes

In cases involving very serious offences, the courts have additional power to order that the offender be detained for longer periods. For those aged between 10 and 13, this power is only available where the crime committed carries a maximum sentence of at least 14 years for adults. For those aged between 14 and 17, it is also available for causing death by dangerous driving, or for causing death by driving under the influence by drink or drugs. The length imposed by the judge cannot exceed the maximum sentence available for an adult.

Detentions at Her Majesty's pleasure

Offenders aged 10–17 who are convicted of murder must be ordered to be detained during Her Majesty's pleasure. This is an indeterminate sentence which allows the offender to be released when suitable. The judge in the case can recommend a minimum number of years that should be served before release is considered, and the Lord Chief Justice will then set the tariff. If an offender reaches 22 while he or she is still serving the sentence he or she will then be transferred to an adult prison.

Community orders

Community orders can only be given to young offenders aged 16 and over. The same requirements used for adults can be imposed, including an unpaid work requirement, an activity requirement, a prohibited and a curfew requirement. The only exception is the curfew limit which can be imposed from 10 upwards.

Attendance centre orders

Attendance centre orders are only available to offenders aged 10–25. They involve attendance at a special centre for two hours per week up to a maximum of 36 hours for those aged between 16 and 24, and a maximum of 24 hours those aged 10 to 15. The minimum number of hours is usually 12, but can be less for those aged under 14. The centres used to be run by the police but are now run by the probation service; they are usually held on a Saturday afternoon and will include organized leisure activities and training. An Attendance centre order cannot be made if the offender has served a period of detention prior to the new offence.

Supervision orders

Those who are 18 and under can be placed under supervision for a period of up to three years, supervision being provided by one of the following:

- the local social services
- a probation officer
- a member of the Youth Offending Team

Action plan orders

Under Section 69 of the Crime and Disorder Act 1998¹⁵ a new community order called Action Plan Order which the courts can impose on offenders under the age of 18. In the government whitepaper *No More Excuses*, the government said it was 'intended to be a short to be a short intensive programme of community intervention combining punishment, rehabilitation and reparation to change offending behaviours and further crime'. Action Plan Orders place the offender under supervision setting out requirements the offender has to comply with in respect to his or her action and where about during a period of three months.

These requirements can be any of the following:

- to participate in set activities
- to present himself to a specified person at stated times and places
- to attend an attendance centre
- to stay away from certain places
- to comply with arrangements for his education
- to make reparation.

Fines

The maximum amount that can be fined varies with the age of the young offender. Those between 10 and 13 years can only be fined a maximum of £250. Those aged between 14–17 the maximum is £1,000. Those aged 18 and over are subject to the normal limit of the Magistrates' Court £5,000.

Reparation orders

Repartition orders can be imposed on offenders under the age of 18. However, this order cannot be made in combination with a custodial sentence, Community Service order or an Action Plan Order. An order will require the offender to make reparation, as specified in the order, to a person or person who were victims of the offence, or were otherwise affected by it, or to the community at large. The order is for a maximum of 24 hours and the reparation order must be

13. <https://publications.parliament.uk>

completed under supervision within three months of its imposition. An order for direct reparation to a victim can only be made with that person's consent.

Discharges

Discharges may be used for defendants of any age, and are commonly used for first-time young offenders who have committed minor crimes. The courts cannot conditionally discharge an offender in the following circumstances:

- where a child or young offender who is convicted of an offence has been warned within the previous two years, unless there are exceptional circumstances which must be explained in open court.
- where the offender is in breach of an anti social behavior order
- where the offender is in breach of a sex offender order.

Reprimands and warnings

Reprimands and warnings are not sentences passed by the court, but methods by which the police can deal with offenders without bringing a case to court. For a reprimand or warning to be given, there has to be evidence that a child or young person has committed an offence and admits it. The police must also be satisfied that it would not be in the public interest for the offender to be prosecuted in court. A reprimand or warning can only be given if the offender has never been convicted of any offence. There is no maximum limit to the number of times that an offender can be 'cautioned' by the police. The first step is the reprimand. This can only be given if the young offender has not been previously reprimanded or warned. Even then, it should not be used where the police officer considers the offence so serious that a warning would be required. Any offender can be warned only if he has not been warned before or if an earlier warning was more than two years before. The child or young offender when warned must be referred to the Youth Offending Team. The YOT will assess the case and, unless it considers it inappropriate to do so, arranges for the offender to participate in a rehabilitation scheme.

Sentencing Policy in USA

After decades of stability, U.S. federal and state prison populations escalated steadily between 1973 and 2009, growing from about 200,000 people to 1.5 million. The increase was driven

more by changes in policy measures that imprisoned people for a wider range of offenses and imposed longer sentences than by changes in crime rates. Has this greater reliance on incarceration yielded significant benefits for the nation, or is a change in course needed? To answer that question, a committee of the National Research Council examined the best available evidence on the effects of high rates of incarceration. The committee found no clear evidence that greater reliance on imprisonment achieved its intended goal of substantially reducing crime. Moreover, the rise in incarceration may have had a wide range of unwanted consequences for society, communities, families, and individuals. The committee's report, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, urges policymakers to reduce the nation's reliance on incarceration and seek crime-control strategies that are more effective, with better public safety benefits and fewer unwanted consequences.

In the United States, sentencing law varies by jurisdiction. Since the US Constitution is the supreme law of the land, all sentences in the US must conform to the requirements of the Constitution, which sets basic mandates while leaving the bulk of policy-making up to the states.

Despite the continued growth of federal criminal law, the vast majority of criminal sentencing takes place in state and local courts. Except for death penalty cases (which are exceptionally rare), juries generally have little involvement in sentencing, which is typically left to the discretion of the presiding judge. Sentences are typically pronounced by the judge in a separate hearing, after the jury (or other finder of fact) has issued findings of fact and a guilty verdict, and in some cases after the probation department has carried out a pre-sentence investigation. The structure and jurisdiction of courts within a U.S. state are typically governed by state law, as are sentences and sentencing guidelines and regimes. There is enormous substantive and procedural difference between the criminal laws of the fifty states and the various federal territories and enclaves.

Each state is very different from every other state in terms of sentencing, and even what acts are crimes:

1. Actions which might constitute a crime in one state would not necessarily constitute a crime in another state, or they might constitute a crime of a different severity. A 15-year-old and a 17-year-old having consensual sexual intercourse might constitute a crime in one state but not another. A person possessing cannabis, certain types of firearms,

or exotic animals might be committing serious crimes in some states but are perfectly legal to possess in other states. A burglary might be completed only upon entry into a locked house in one state, but upon entry into an attached carport in another.

2. States have different schemes for dividing up crimes by severity and these categories might have similar names across states, but different practical effects. For example, a "2nd degree felony" in Florida is a category of crime punishable by up to 15 years in prison with no minimum while a "2nd degree felony" in Texas is a category of crime punishable by up to 20 years in prison, with a mandatory minimum of 2 years incarceration.
3. Many states have adopted sentencing guidelines which incorporate various factors into a single formula that may or may not constrain the judge's sentencing discretion. The general purpose of these schemes is to produce uniform and fair sentencing within a jurisdiction. However, since views about the correct approach to criminal justice vary from state to state, these statutory schemes vary enormously.
4. Many states have mandatory sentencing statutes which remove the judge's discretion under certain circumstances. Mandatory sentencing schemes typically require minimum periods of incarceration for certain serious crimes and for individuals who have serious criminal records. The state typically has discretion to pursue or waive mandatory sentencing. The content of these mandatory sentencing statutes and the procedures required to bring them into play are different in each state.
5. Some states have parole or early release from incarceration, while others do not. Many states have forms of punishment that are less severe than incarceration (such as probation, time in a halfway house, community service, or house arrest), but the exact form of these punishments, as well as which people can be sentenced under such alternatives, varies from state to state.

Severe Sentencing Policies Did Not Clearly Yield Substantial Benefits¹⁶

The growth in imprisonment rates during recent decades was driven largely by changes in sentencing policy that sent more people to prison for longer periods of time but which does not appear to have substantially improved public safety. Between 1975 and 1995, all 50 states and

¹⁶ <https://www.nap.edu>

the federal government reduced judges' discretion in sentencing by mandating imprisonment for a wide variety of offenses. These policies included:

- mandatory prison sentences for most drug crimes and long sentences for violent crimes and repeat offenses;
- “three strikes” laws that lengthened sentences, requiring minimum sentences of 25 years or longer for some offenses; and
- “truth in sentencing” laws, which require those affected to serve at least 85 percent of their prison sentences. Contrary to policymakers' expectations, greater reliance on incarceration did not clearly yield substantial crime-control benefits. During the four decades when incarceration rates steadily rose, crime rates showed no clear trend. Studies show that the size of the crime-reduction effect of increased incarceration is highly uncertain and is unlikely to have been large. In addition, evidence shows that lengthy sentences are an inefficient approach to controlling crime; rates of re-offending drop significantly as people age, and so very long sentences incarcerate people whose likelihood of committing further crimes is low even if they were not imprisoned.

The United States Sentencing Commission

The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are:

1. to establish sentencing policies and practices for the federal courts, including guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes;
2. to advise and assist Congress and the executive branch in the development of effective and efficient crime policy; and
3. to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.

The U.S. Sentencing Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The sentencing guidelines established by the Commission are designed to:

1. incorporate the purposes of sentencing (i.e., just punishment, deterrence, incapacitation, and rehabilitation);
2. provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors;
3. reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

The Commission is charged with the ongoing responsibilities of evaluating the effects of the sentencing guidelines on the criminal justice system, recommending to Congress appropriate modifications of substantive criminal law and sentencing procedures, and establishing a research and development program on sentencing issues.

In addition to creating the Sentencing Commission, the Sentencing Reform Act abolished parole for offenders sentenced under the guidelines so that the sentence received would be basically the sentence served. Under the law, inmates may earn up to 54 days of credit a year for good behavior.

Congress created the Commission to serve as an expert agency in federal sentencing matters. The Commission:

1. Advises Congress and the executive branch on crime and sentencing policy;
2. Maintains the nation's most comprehensive database on federal sentencing;
3. Trains thousands of judges, probation officers, prosecutors, defense attorneys, and others involved in the sentencing process;
4. Analyzes and researches crime and sentencing-related issues;
5. Collects and disseminates information on federal sentencing practices;

6. Assesses the guidelines' effectiveness in achieving the sentencing purposes of just punishment, deterrence, incapacitation, and rehabilitation;
7. Provides reports and technical assistance to Congress and the judiciary on sentencing issues;
8. Amends the guidelines as necessary;
9. Operates a telephone helpline to assist judges, probation officers, and prosecuting and defense attorneys with guideline application; and
10. Provides sentencing information to the courts, inmates, the general public, the defense bar, students, professors, the business community, and congressional offices.

Indeterminate sentencing

In some states, a judge will sentence criminals to an indeterminate amount of time in prison for certain crimes. This period is often between 1 and 3 years (on the short end) and 5–50 years on the upper end. The legislature generally sets a short, mandatory minimum sentence that an offender must spend in prison (e.g. one-third of the minimum sentence, or one-third of the high end of a sentence). The parole board then sets the actual date of prison release, as well as the rules that the parolee must follow when released.

During a long sentence, an offender can take full advantage of the programs that the prison has, including rehab for drug abuse or alcohol abuse, anger management, mental health, and so on, so when the offender completes the rehab or program he may be released upon request from authorities with a lower risk of recidivism. This process tries to combat the tendency of prisoners leaving incarceration after a long sentence to go back to offending in short order, without any attempt at correcting their ways.

Determinate sentencing

Those given short sentences usually serve the full-time (do "day-for-day") as imposed by the judge, or might receive time off for good behavior, based on state or local rules and regulations.

In the mid-1970s, most state and federal prisons moved from long term to short term sentencing. Over time, though, state and federal authorities have gradually migrated their philosophies back toward long-term sentences. Many states use a mixture of the two; e.g., some offenders may receive sentences reduced by several months due to rehabilitation, counseling, and other programs, as well as good time.

Since the 1840s, many jurisdictions, including the federal courts, have adopted a practice of having a probation officer prepare a presentence investigation report to inform the court as to the defendant's characteristics, including his criminal record, if any. In the 1970s, the length of incarceration had increased in response to the rising of crime rates in the United States. By the 1980s, state legislatures began to reduce judicial discretion in sentencing terms and conditions. This was especially true in cases of life imprisonment, which between 1992 and 2003 increased by 83% due to the implementation of three strikes laws. Short term sentencing, mandatory minimums, and guideline-based sentencing began to remove the human element from sentencing. They also required the judge to consider the severity of a crime in determining the length of an offender's sentence.

Sentencing in murder case

The United States does not have a specific guideline to sentencing murderers, including serial killers. When a killer is apprehended, he will be charged with murder, and if convicted can get life in prison or receive the death penalty, depending on in which state the murders took place. Generally speaking, each victim of a murder will merit a separate charge of murder against the offender, and as such, the killer could get a life sentence, a death sentence, or some other determinate or indeterminate sentence based upon the number of murders, the evidence presented, and any aggravating or mitigating circumstances present. Such a compounded sentence may be tailored to run consecutively, with one sentence beginning after completion of another, or concurrently, where all or most of several sentences is served together.

Below are several examples of how a murderer may be sentenced, by state:

Arizona

In Arizona, a person is guilty of murder if an offender knowingly and intentionally causes the death of a person or an unborn child. The murder must be premeditated. If an individual is found

guilty of murder, there are three possible sentences: 35 years to life, life without parole, or the death penalty.¹⁷

Washington

In the state of Washington, a person is found guilty of first degree murder when there is a premeditated intent to cause the death of another person. Murder in the first degree is a class A felony.¹⁸ If a person is convicted of first degree murder, he or she will receive a life sentence. If an aggravating circumstance exists in addition to first degree murder, the defendant can be charged with aggravated first-degree murder, which carries only two possible sentences: death or life without parole. Aggravating factors include the killing of a law enforcement officer, murder for hire, or murder committed during the course of kidnapping, rape, robbery, burglary, or arson, or for multiple murders.¹⁹

Hawaii

In Hawaii, a person is found guilty of second degree murder when they intentionally and knowingly cause the death of another person. If the person intentionally or knowingly kills more than one person, or kills a law enforcement officer, a judge, or a prosecutor in the line of, or as a result of, their duties, a witness to a crime, or a defendant to a corroborated crime, or if he hires another party to kill a certain individual, the person has met the criteria to be charged with first degree murder. The State of Hawaii has no death penalty. If they are found guilty, the maximum penalty is life imprisonment without parole²⁰

The court must impose a sentence "sufficient, but not greater than necessary," to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2). See 18 U.S.C. § 3553(a). Subsections (a), (b), and (c) are structured to reflect the three-step process used in determining the particular sentence to be imposed. If, after step (c), the court imposes a sentence that is outside the guidelines framework, such a sentence is considered a "variance". Irizarry v. United

¹⁷<https://www.azleg.gov/>

¹⁸<https://apps.leg.wa.gov/rcw/default.aspx?cite=9A.32.030>

¹⁹ *ibid*

²⁰https://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0707/HRS_0707-0701.htm

States²¹, (describing within-range sentences and departures as "sentences imposed under the framework set out in the Guidelines").

Conclusion

Sentencing serves the purposes of crime reduction and reparation as well as punishment. It is important to establish how much sentencing can be expected to contribute to crime reduction. Sentencing, and the framework within which it operates, need to earn and merit public confidence, but this is a complex relationship, and not one in which sentences can simply be “driven before the wind” of apparent public mood, regardless of the principles that need to govern sentencing. More can and should be done to improve public understanding of sentencing, and sentences” understanding of public opinion. Sentencing in England and Wales refers to a bench of magistrates or district judge in a Magistrate's Court or a judge in a Crown Court passing sentence on a person found guilty of a criminal offence. In deciding the sentence, the court will take into account a number of factors.. Fines are the most common sentence. For the most serious offences such as murder, the sentence is fixed as life. Some offences carry minimum sentences, for example, certain firearms offences, "three strikes and you're out" burglaries, using someone to mind a weapon, or those committed by dangerous offenders. There are different sentencing provisions for offenders aged ten to seventeen years old, and some modified provisions for those in the 18-20 age range. The main statute on sentencing is the Criminal Justice Act 2003, which created a framework for sentencing decisions in the courts. the purpose of sentencing is to , the punishment of offenders; the reduction of crime (including its reduction by deterrence) ; the reform and rehabilitation of offenders ; the protection of the public ; the making of reparation by offenders to persons affected by their offences. The court is required to make two principal decisions: the type of sentence and its length or, in the case of a fine, the amount. In USA the committee found no clear evidence that greater reliance on imprisonment achieved its intended goal of substantially reducing crime. The United States Sentencing Commission is an independent agency in the judicial branch of government. Its principal purposes are: to establish sentencing policies and practices for the federal courts, including guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes; to advise and assist Congress and the executive branch in the development of

²¹553 U.S. 708, 709-16 (2008)

effective and efficient crime policy. Therefore the sentencing policy is complex thing which has to be analyzing in all respects before the sentencing.