

**“Introduction to Crime and Punishment”.**

- In Section 1 of this course you will cover these topics:
  - Nbsp; Early History (2000 B.C. To A.D. 1800)
  - Nbsp; Prisons (1800 To The Present)
  - Nbsp; Correctional Ideologies: The Pendulum Swings
  - Nbsp; Sentencing
  - Nbsp; Appellate Review

**: Nbsp; Early History (2000 B.C. To A.D. 1800)****Topic Objective:**

At the end of this topic student would be able to:

Comprehend about Penitentiaries and Their Evolution

Learn about the Correctional Institutions of Old ages

Understand how Canada Deals with Crime and Punishment

Identify The First Prison

Develop learning regarding the Evolution of the Penitentiary System

**Definition/Overview:**

**Overview:** The first commissioners advocated building a prison of 200 cells, based on the United States Auburn System, at an approximate cost of 12,500 Pounds. They recommended that the convicts be put to profitable labor, fed well, and given religious instruction. They also

avored the use of diet restriction (bread and water) and solitary confinement as punishments rather than the lash. Hope, rather than fear, was to be used as an incentive; a prisoners good behavior would be rewarded by a reduction of his sentence. As well, they thought prisoners should be given a small sum for their work, paid upon their release. At first, women had to be imprisoned in the same institution as men, though confined separately. Eventually, another institution was built to house women offenders. The commission also advocated choosing a site with ready access to construction materials and transportation, so supplies and the products of prisoners labor could be moved in and out easily. Kingston at the junction of the St. Lawrence River, Lake Ontario and the Rideau Canal, and (at that time) the economic hub of Upper Canada seemed an ideal location. A promising site was found to the west of the city at Hatters Bay, with a good harbor, excellent limestone and owners willing to sell the 100 acres needed for 1,000 Pounds.

### **Key Points:**

#### **1. Penitentiaries and Their Evolution**

The concept of penitentiaries as a place of rehabilitation is relatively new in human society. Even prisons and jails were uncommon until the last few centuries. Crime was less prevalent in the close, watchful communities of the ancient and medieval world. Offences against society were usually punishable by death. Offences against individuals or small groups were dealt with by family members or by the community with some sort of restitution or revenge. Public shaming and whipping were popular methods of dealing with minor crimes. If a serious offender was spared from execution but was deemed a threat in society, he or she could be banished, transported to a remote colony, or sold into slavery. Jails were rarely used, except to hold the accused until his trial or execution. Ancestral roots of the modern penitentiary can be linked to the discipline of the Church, particularly its monastic orders. Clergy who had strayed from the fold were often confined in small cells, cut off from human contact, given only a bible to read and enough coarse bread and water to allow them to subsist. This solitary confinement was based on the Christian principle that sinners could redeem themselves through contemplation

and penance. The idea that people could change was rare before the 19th century.

## 2. Correctional Institutions of Old ages

The first approximation of a correctional institution is the Brideswell, named after an old royal palace in London, England. In 1557, this palace was converted into a workhouse to provide a place for vagrants and petty criminals mostly peasants forced off their land to do honest work and learn good habits. Brideswells became common throughout England but were poorly run and quickly degenerated into unproductive chaos. By the early 1700s, most European jails were nightmarish, privately run hotels where prisoners had to pay exorbitant amounts for food and other services. Rich prisoners could live in luxury, but the poor who could not beg food from visitors often starved to death. Men, women and children were packed together into filthy cells, ruled by violent gangs and riddled with disease, especially typhus. A brief interest in jailhouse hygiene arose only after lawyers and judges in the courtrooms became infected with jail fever. By the late 1700s, there were calls for penal reform from several sources. The philosophers of the Age of Reason emphasized human dignity and the rights of individuals. Evangelical groups, such as the Quakers, revived the monastic idea of redemption through solitude and discipline. And it became evident that execution, torture and imprisonment were not achieving their goals of deterrence or reform. These methods only inured society to violence and made lawgivers look barbaric. In England, although death sentences continued to be handed out for offences large and small, by 1810 only 10 per cent of those condemned were actually put to death.

## 3. Canada Deals with Crime and Punishment

Before 1835, prisons in Canada were merely jailhouses where debtors or individuals awaiting trial would be held. As in Europe, most offences against society were corrected by execution, physical punishment, public shaming or fines. As Canada moved toward independence, it became obvious that the punishment of crime needed to be studied and responded to locally. As in Britain, executions were rarely carried out and were widely censured as ineffective and repulsive. However, jails were filthy, disease-ridden and chaotic. Prisoners had no work or exercise, and dry bread was often their only food. Fines were usually inappropriate, as amounts

were based on the seriousness of the crime rather than the offenders ability to pay. Poor offenders were financially ruined by the minimum fine, and the maximum did not inconvenience rich lawbreakers. Banishment was considered nonsensical and unjust to the countries that were burdened with Canadas cast-off criminals.

#### **4. The First Prison**

The first commissioners advocated building a prison of 200 cells, based on the United States Auburn System, at an approximate cost of 12,500 Pounds. They recommended that the convicts be put to profitable labor, fed well, and given religious instruction. They also favored the use of diet restriction (bread and water) and solitary confinement as punishments rather than the lash. Hope, rather than fear, was to be used as an incentive; a prisoners good behavior would be rewarded by a reduction of his sentence. As well, they thought prisoners should be given a small sum for their work, paid upon their release. At first, women had to be imprisoned in the same institution as men, though confined separately. Eventually, another institution was built to house women offenders. The commission also advocated choosing a site with ready access to construction materials and transportation, so supplies and the products of prisoners labor could be moved in and out easily. Kingston at the junction of the St. Lawrence River, Lake Ontario and the Rideau Canal, and (at that time) the economic hub of Upper Canada seemed an ideal location. A promising site was found to the west of the city at Hatters Bay, with a good harbor, excellent limestone and owners willing to sell the 100 acres needed for 1,000 Pounds.

#### **5. The Evolution of the Penitentiary System**

Until 1935, the Kingston Penitentiary evolved slowly from an almost purely punitive institution to one in which prisoners began to receive humane treatment and rehabilitation. Hard labor gave way to machine shops. Sunday school was supplemented with a wider range of education and training. Local, regional and international penal reform associations pushed for a greater emphasis on rehabilitation, the scientific classification of offenders, probation, indeterminate sentences and parole. The Ticket of Leave Act, legislated in 1899, provided offenders with additional opportunities for release based on the offence, the offenders character, and the

likelihood that the offender would commit another offence. In 1901, the Dominion Parole Office was created.

### **Topic : Nbsp; Prisons (1800 To The Present)**

#### **Topic Objective:**

At the end of this topic student would be able to:

Develop learning about American Prison System

Understand the History of Penitentiary

Learn about the Design and facilities of Penitentiary

Learn about the Types of Jails

Understand the Rehabilitation Process

Develop learning regarding Prisons by country

#### **Definition/Overview:**

**Prison/ Penitentiary:** A prison, penitentiary, or correctional facility is a place in which individuals are physically confined or interned and usually deprived of a range of personal freedoms. Prisons are conventionally institutions, which form part of the criminal justice system of a country, such that imprisonment or incarceration is a legal penalty that may be imposed by the state for the commission of a crime. In popular parlance of many countries, the term jail (gaol) is considered synonymous with prison.

**Key Points:****1. Prison System**

A criminal suspect who has been charged with or is likely to be charged with a criminal offense may be held on remand in prison if he or she is denied, refused or unable to meet conditions of bail, or is unable to post bail. This may also occur where the court determines that the suspect is at risk of absconding before the trial, or is otherwise a risk to society. A criminal defendant may also be held in prison while awaiting trial or a trial verdict. If found guilty, a defendant will be convicted and may receive a custodial sentence requiring imprisonment. Prisons may also be used as a tool of political repression to detain political prisoners, prisoners of conscience, and enemies of the state, particularly by authoritarian regimes. In times of war or conflict, prisoners of war may also be detained in prisons. A prison system is the organizational arrangement of the provision and operation of prisons, and depending on their nature, may invoke a corrections system. Although people have been imprisoned throughout history, they have also regularly been able to perform prison escapes.

**2. History of Penitentiary**

For most of history, imprisoning has not been a punishment in itself, but rather a way to confine criminals until corporal or capital punishment was administered. There were prisons used for detention in Jerusalem in Old Testament times. Dungeons were used to hold prisoners; those who were not killed or left to die there often became galley slaves or faced penal transportations. In other cases debtors were often thrown into debtor's prisons, until they paid their jailers enough money in exchange for a limited degree of freedom. Only in the 19th century, beginning in Britain, did prisons as we know them today become commonplace. The modern prison system was born in London, as a result of the views of Jeremy Bentham. The notion of prisoners being incarcerated as part of their punishment, and not simply as a holding state till trial or hanging, was at the time revolutionary.

The first modern prisons of the early 19th Century were sometimes known by the term penitentiary (a term still used by some prisons in the USA today): as the name suggests, the goal of these facilities was that of penance by the prisoners, through a regimen of strict disciplines,

silent reflections, and maybe forced and deliberately pointless labor on treadwheels and the like. This Auburn system of prisoner management was often reinforced by elaborate prison architectures, such as the separate system and the panopticon. It was not until the late 19th Century that rehabilitation through education and skilled labor became the standard goal of prisons.

### 3. Design and facilities of Penitentiary

Male and female prisoners are typically kept in separate locations or separate prisons altogether. Prison accommodation, especially modern prisons in the developed world, are often divided into wings. A building holding more than one wing is known as a hall.

Amongst the facilities that prisons may have are:

A main entrance, which may be known as the 'gatelodge' or 'sally port' (stemming from old castle nomenclature)

A chapel, mosque or other religious facility, which will often house chaplaincy offices and facilities for counselling of individuals or groups

An 'education facility', often including a library, providing adult education or continuing education opportunities

A gym or an exercise yard, a fenced, usually open-air-area which prisoners may use for recreational and exercise purposes

A healthcare facility or hospital

A segregation unit (also called a 'block' or 'isolation cell'), used to separate unruly, dangerous, or vulnerable prisoners from the general population, also sometimes used as punishment

A section of vulnerable prisoners (VPs), or protective Custody (PC) units, used to accommodate prisoners classified as vulnerable, such as sex offenders, former police officers, informants, and those that have gotten into debt or trouble with other prisoners

A section of safe cells, used to keep prisoners under constant visual observation, for example when considered at risk of suicide

A visiting area, where prisoners may be allowed restricted contact with relatives, friends, lawyers, or other people

A death row in some prisons, a section for criminals awaiting execution

A staff accommodation area, where staff and guards live in the prison, typical of historical prisons

A service/facilities area housing support facilities like kitchens

Industrial or agricultural plants operated with convict labor

A recreational area containing a TV and pool table

Prisons are normally surrounded by fencing, walls, earthworks, geographical features, or other barriers to prevent escape. Multiple barriers, concertina wire, electrified fencing, secured and defensible main gates, armed guard towers, lighting, motion sensors, dogs, and roving patrols may all also be present depending on the level of security. Remotely controlled doors, CCTV monitoring, alarms, cages, restraints, nonlethal and lethal weapons, riot-control gear and physical segregation of units and prisoners may all also be present within a prison to monitor and control the movement and activity of prisoners within the facility.

Modern prison designs have sought to increasingly restrict and control the movement of prisoners throughout the facility while permitting a maximal degree of direct monitoring by a smaller corrections staff. As compared to traditional large landing-cellblock designs which were inherited from the 19th century and which permitted only intermittent observation of prisoners, many newer prisons are designed in a decentralized podular layout. Smaller, separate and self-contained housing units known as pods or modules are designed to hold between sixteen and fifty prisoners each, and are arranged around exercise yards or support facilities in a decentralized campus pattern. A small number of corrections officers, sometimes a single officer, is assigned to supervise each pod. The pods contain tiers of cells arranged around a central control station or desk from which a single officer can monitor all of the cells and the entire pod, control cell doors, and communicate with the rest of the prison. Pods may be designed for high-security indirect-supervision, in which officers in segregated and sealed control booths monitor smaller numbers of prisoners confined to their cells.

An alternative is direct-supervision, in which officers work within the pod and directly interact with and supervise prisoners, who may spend the day outside their cells in a central dayroom on

the floor of the pod. Movement in or out of the pod to and from exercise yards, work assignments or medical appointments can be restricted to individual pods at designated times, and is generally centrally controlled. Goods and services, such as meals, laundry, commissary, educational materials, religious services and medical care can increasingly be brought to individual pods or cells as well. Conversely, despite these design innovations, overcrowding at many prisons, particularly in the U.S., has resulted in a contrary trend, as many prisons are forced to house large numbers of prisoners, often hundreds at a time, in gymnasiums or other large buildings that have been converted into massive open dormitories. Lower-security prisons are often designed with less restrictive features, confining prisoners at night in smaller locked dormitories or even cottage or cabin-like housing while permitting them freer movement around the grounds to work or activities during the day.

#### **4. Types of Jails**

##### **4.1 Juvenile**

Prisons for juveniles (people under 18) are known as young offenders institutes and hold minors who have been convicted, many countries have their own age of criminal responsibility in which children are deemed legally responsible for their actions for a crime.

##### **4.2 Military**

Prisons form part of military systems, and are used variously to house prisoners of war, unlawful combatants, those whose freedom is deemed a national security risk by military or civilian authorities, and members of the military found guilty of a serious crime.

##### **4.3 Political**

Certain countries maintain or have in the past had a system of political prisons; arguably the gulags associated with Stalinism are best known. The definition of what is and is not a political crime and a political prison is, of course, highly controversial.

#### **4.4 Psychiatric**

Some psychiatric facilities have characteristics of prisons, especially when confining patients who have committed a crime and are considered dangerous. In addition, many prisons have psychiatric units dedicated to housing offenders diagnosed with a wide variety of mental disorders.

### **5. Rehabilitation Process**

Meta-analysis of previous studies shows that prison sentences do not reduce future offenses, when compared to non-residential sanctions. This meta-analysis of one hundred separate studies found that post-release offenses were around 7% higher after imprisonment compared with non-residential sanctions, at statistically significant levels. Another meta-analysis of 101 separate tests of the impact of prison on crime found a 3% increase in offending after imprisonment. Longer periods of time in prison make outcomes worse, not better, offending increases by around 3% as prison sentences increase in length.

Effective rehabilitation programs reduce the likelihood of re-offense and recidivism. Effective programs are characterised by three things: first, they provide more hours for people with known offense risk factors (the Risk Principle); secondly, they address problems and needs that have a proven causal link to offending (the Needs Principle); and thirdly, they use cognitive-behavioral approaches (the Responsivity Principle). Providing rehabilitation to people at lower risk of reoffending results in a 3% reduction in reoffending, while providing rehabilitation to people with a high risk of re-offending is three times as effective, resulting in a 10% reduction in subsequent offending. Risk factors for re-offending are: age at first offense, number of prior offenses, level of family and personal problems in childhood and other historical factors, along with level of current needs related to offending. Those individuals who had many personal and family problems in childhood (particularly 19 or more), started offending before puberty, and have committed multiple priors are more likely to re-offend in future, according to longitudinal studies internationally.

As of 2006, it is estimated that at least 9.25 million people are currently imprisoned worldwide. It is believed that this number is likely to be much higher, in view of general under-reporting

and a lack of data from various countries, especially authoritarian regimes. In absolute terms, the United States currently has the largest inmate population in the world, with more than 2 million or more than one in a hundred adults in prison and jails. Although the United States represents less than 5% of the world's population, over 25% of the people incarcerated around the world are housed in the American prison system. Pulitzer Prize winning author Joseph T. Hallinan wrote in his book *Going Up the River: Travels in a Prison Nation*, so common is the prison experience that the federal government predicts one in eleven men will be incarcerated in his lifetime, one in four if he is black. In 2002, both Russia and China also had prison populations in excess of 1 million. By October 2006, the Russian prison population declined to 869,814 which translated into 611 prisoners per 100,000 population.

As a percentage of total population, the United States also has the largest imprisoned population, with 739 people per 100,000 serving time, awaiting trial or otherwise detained. In March 2007, the United Kingdom had 80,000 inmates (up from 73,000 in 2003 and 44,000 in 1985) in its facilities, one of the highest rates among the western members of the European Union (EU) (a record formerly held by Portugal). The highest imprisonment rates among the larger EU members include that of Poland, which in August 2007 had about 90,000 inmates, i.e. 234 prisoners per 100,000 inhabitants, while the highest rates are in the Baltic states Estonia, Latvia and Lithuania with estimated rates of 240, 292 and 333 respectively in 2006. The high proportion of prisoners in some developed countries is from various causes, but the attitude towards drug-taking plays a considerable part. In undeveloped countries, rates of incarceration are often lower, though this is not a rule. In general, such societies have less goods to steal and a more community based social system, with less judicial law-enforcement. Also their economies may not support the high cost of incarceration.

## **6. Prisons by country**

### **6.1 Australia**

Many prisons in Australia were built by convict labor in the 1800s. During the 1990s, various state governments in Australia engaged private sector correctional corporations to build and operate prisons whilst several older government run institutions were

decommissioned. Operation of Federal detention centers was also privatized at a time when a large influx of illegal immigrants began to arrive in Australia.

### **6.2 Canada**

The 52 penitentiaries in Canada are operated by the federal government, and are for those who have been sentenced to serve more than 2 years of custody. The boundary of two years separating provincial and federal custody underlies the sentencing of some offenders to two years less a day, so they can serve their sentences in provincial correctional institutions.

### **6.3 France**

France has 188 prisons in mainland and the oversea territories. Statistics showed around 50,000 places on July 1, 2005 for around 60,000 prisoners.

### **6.4 Germany**

Germany has 194 prisons (of which 19 are open institutions). Official statistics showed 80,214 places on March 31, 2007. On the same day, there were 75,719 prisoners (of which 13,168 pre-trial; 60,619 serving sentences; 1,932 others, i.e. mainly civil prisoners; 4,068 were female). This is less than the highest value of 81,176 prisoners on March 31, 2003.

### **6.5 India**

There are 1305 prisons in India (Central Jail 93. District Jail-257. Sub-Jail 850, Open Jail-2. Special jail 28, Borstal Institution-13 and Juvenile and Lunatics Camps-13) having the authorized capacity of 214241. Against this authorized accommodation the actual prison population is 257235 which is dominated by the large chunk of under trial prisoners 1 e.. 73% This proportion of under trial prisoners is rapidly is on increase leading to overcrowding in Jail 20% in 1998 against 9.33% in 1996. The percentage of women prisoners in total prison population Is increasing on rapid pace especially in Bihar. Madhya Pradesh. Gujrat. Orissa, Andhra Pradesh. Maharashtra and Mizoram,

while in Delhi and Haryana it is slightly declining or static in comparison to the year 1996. The problem of overcrowding in jail is not uniformly prevailing in all States IUTs. However is 3.18%. We have the sanctioned strength of 49030 of prison staff at various ranks out of which the present staff strength is around 40000. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners. while in UK 2 prison officers are available only for 3 prisoners.

### **6.6 Ireland**

Most jails in the Republic of Ireland were built in the 19th century, including Kilmainham Gaol (no longer in use), Mountjoy Prison and Portlaoise Prison. A new 30m prison is planned at Thornton Hall to replace Mountjoy.

### **6.7 New Zealand**

New Zealand currently maintains 19 prisons around the country. The Department of Corrections has an annual budget of NZD\$748 million and assets worth over NZD\$1.7 billion. Official statistics show (as of June 30, 2007) that there are currently 7,605 prisoners within the New Zealand correctional system. (5,490 Sentenced Prisoners and 1,552 Remanded Prisoners) + 5,795 staff. Breakouts are only at 0.15 per 100 prisoners and there is a rate of only 15% positive drug results during random drug testing in NZ prisons.

### **6.8 Poland**

As of the end of August 2007, Poland officially declared 90,199 prisoners (13,374 pre-trial; 76,434 serving sentences; 391 others; 2,743 prisoners were female), giving an imprisonment rate per 100,000 inhabitants of about 234. The overpopulation rate (number of prisoners held compared to number of places for prisoners) was estimated by the official prison service as 119%. The growth rate of imprisonment in Poland during 2006-2007 was approximately 4% annually, based on the August 2007 estimate of 90,199 prisoners and the June 2005 estimate of 82,572 prisoners.

### 6.9 Turkey

Prisons in Turkey are classified as closed, semi-open and open prisons. Closed prisons are separated into different kinds according to its structure and the number of the prisoners held. Examples are A type, B type, E type and F type. F types are the ones in which high penalty prisoners are held. Most which are being built today are L types that are for low penalty prisoners.

### : Nbsp; Correctional Ideologies: The Pendulum Swings

#### Topic Objective:

At the end of this topic student would be able to:

Understand about the Correctional theory

Develop learning regarding Juvenile corrections

Understand about the Juvenile Justice and Delinquency Prevention Act

Learn about the Corrections under Federalism

Develop learning regarding Duration of incarceration

Learn about the American Correctional Association

#### Definition/Overview:

**Corrections:** Corrections in general refers to society's handling of persons after their conviction of a criminal offense. The components of the criminal justice system that serve to punish criminal offenders involves the deprivation of life, liberty or property after due process of law. Sentences imposed upon offenders range from probation to serving time in prison, with intermediate sanctions, including sentences to a halfway house or community corrections program, home confinement, and electronic monitoring. Financial penalties may include fines,

forfeiture, and restitution.

### **Key Points:**

#### **1. Correctional theory**

In some countries, as well as in Western countries in the past, this also included judicially-ordered corporal punishment. The basic use of sanctions, which can be either positive (rewarding) or negative (punishment) is the basis of all criminal theory, along with the main goals of social control, and deterrence of deviant behavior. Any facilities operating in the United States adhere to particular correctional theories. Although often heavily modified, these theories determine the nature of the facilities' design and security operations. The two primary theories used today are the more traditional Remote Supervision and the more contemporary Direct Supervision Models. The Remote Supervision Model (RSM) consists of an officer(s) observing the inmate population from a remote position, e.g., a tower or secure desk area. The Direct Supervision Model (DSM) positions the Corrections Officer within the inmate population, creating a more pronounced presence.

#### **2. Juvenile corrections**

Classical criminology stresses that causes of crime lie within the individual offender, rather than in their external environment. For classicists, offenders are motivated by rational self-interest, and the importance of free will and personal responsibility is emphasized. Rational choice theory is the clearest example of this approach. It states that people weigh the pros and cons of committing a crime, and offend when the former outweigh the latter. A central deficiency of rational choice theory is that while it may explain when and where people commit crime, it can't explain very well why people choose to commit crimes in the first place. Neither can it explain differences between individuals and groups in their propensity to commit crimes. James Q. Wilson said the conscience and self-control of a potential young offender must be taken into account, and that these attributes are formed by parental and societal conditioning. Rational

choice does not explain why crime should be committed disproportionately by young people, males, city dwellers, and the poor. It also ignores the influence a young choice theory does not take into account the proven correlations between certain social circumstances and individuals personalities, and the propensity to commit crime.

Delinquency Prevention is the broad term for all efforts aimed at preventing youth from becoming involved in criminal, or other antisocial, activity. Increasingly, governments are recognizing the importance of allocating resources for the prevention of delinquency. Because it is often difficult for states to provide the fiscal resources necessary for good prevention, organizations, communities, and governments are working more in collaboration with each other to prevent juvenile delinquency. With the development of delinquency in youth being influenced by numerous factors, prevention efforts are comprehensive in scope. Prevention services include activities such as substance abuse education and treatment, family counseling, youth mentoring, parenting education, educational support, and youth sheltering. Prisons in the United States are operated under strict authority of both the federal and state governments as incarceration is a concurrent power under the Constitution of the United States. Imprisonment is one of the main forms of punishment for the commission of felony offenses in the United States. Less serious offenders, including those convicted of misdemeanor offenses, may be sentenced to a short term in a local jail or with alternative forms of sanctions such as community corrections (halfway house), probation, and/or restitution. In the United States, prisons are operated at various levels of security, ranging from minimum-security prisons that mainly house non-violent offenders to Supermax facilities that house well-known criminals and terrorists such as Terry Nichols, Theodore Kaczynski, Eric Rudolph, Zacarias Moussaoui, and Richard Reid. The United States has the highest documented incarceration rate, and total documented prison population in the world. As of year-end 2006, a record 7.2 million people were behind bars, on probation or on parole. Of the total, 2.2 million were incarcerated. More than 1 in 100 American adults were incarcerated at the start of 2008. The China ranks second with 1.5 million, though China has over four times the population of the US.

### 3. Juvenile Justice and Delinquency Prevention Act

The Juvenile Justice and Delinquency Prevention Act of 1974 is a United States federal law providing funds to states that follow a series of guidelines regarding the rights of juvenile offenders. The purpose of the legislation is to reduce labeling, as advocated by labeling theory. The four key requirements of the act are:

the deinstitutionalization of status offenders and non-offenders (i.e. juveniles generally should not be held in adult jail)

sight and sound separation between juvenile and adult offenders (i.e. if juveniles are put in an adult jail for an adult felony or if space isn't immediately available at a juvenile facility, they must be separated from adult inmates)

a sharp limitation on the ability of the juvenile justice system to detain juveniles in adult facilities (i.e. juveniles should not be locked up for age-specific crimes, such as running away or possessing alcohol)

protection of minority groups from being overrepresented in high-security facilities (i.e. states should not lock up minority youth at a higher rate than other kids)

The third requirement was added in 1980 in response to finding juveniles incarcerated in adult facilities resulted in a high suicide rate, physical, mental, and sexual assault, inadequate care and programming, negative labeling, and exposure to serious offenders and mental patients. The last was not a full requirement of the JJDP Act until the legislation was amended in 1994. The compliance of states towards the requirements of the JJDP Act is monitored by the Office of Juvenile Justice and Delinquency Prevention. As of 2000, the vast majority of participating states comply with the first three requirements and are making strides towards the fourth. . With the exceptions of South Dakota and Wyoming, all states participate in the program.

### 4. Corrections under Federalism

The federal government, states, counties, and many individual cities have facilities to confine people. Generally, prison refers to facilities for holding convicted felons (offenders who commit crimes where the sentence is more than one year). Individuals awaiting trial, being held pending

citations for non-custodial offences, and those convicted of misdemeanors (crimes which carry a sentence of less than one year), are generally held in county jails. In most states, cities operate small jail facilities, sometimes simply referred to as lock-ups, used only for very short-term incarceration can be held for up to 72 business hours or up to five days until the prisoner comes before a judge for the first time or receives a citation or summons before being released or transferred to a larger jail. Some states operate unified systems, where the state operates all the jails and prisons.

The federal government also operates various detention centres in major urban areas or near federal courthouses to hold defendants appearing in federal court. Many of the smaller county and city jails do not classify prisoners (that is, there is no separation by offense type and other factors). While some of these small facilities operate as close security facilities, to prevent prisoner-on-prisoner violence and increase overall security, others may put many prisoners into the same cells without regard to the criminal histories of the prisoners. Other local jails are large and have many different security levels. For example, one of the largest jails in the United States is in Cook County (located in Chicago). This facility has eleven different divisions (including one medical unit and two units for women prisoners), each classified at a different security level, ranging from dormitory style open housing to super-secure lock-down. In California, to prevent violence, prisoners are segregated by race, ethnicity, and sexual orientation while held in county jails and in the California Department of Corrections and Rehabilitation's reception centers, where newly committed prisoners are assessed prior to being transferred to their mainline (long-term) institutions.

## **5. Duration of incarceration**

A judge sentences a person convicted of a crime. The length of the prison term depends upon multiple factors including the severity and type of the crime, state and/or federal sentencing guidelines, the convicted's criminal record, and the personal discretion of the judge. These factors may be different in each state and in the federal system as well. The vast majority of criminal convictions arise from plea bargains, in which an agreement is made between

prosecutors and defense counsel for the defendant to plead guilty to a lesser charge for a lesser sentence than they would receive if found guilty at trial. Some prisoners are given life sentences. In some states, a life sentence means life, without the possibility of parole. In other states, people with life sentences are eligible for parole. In some cases the death penalty may be applied. Many legislatures continued to reduce discretion in both the sentencing process and the determination of when the conditions of a sentence have been satisfied. Determinate sentencing, use of mandatory minimums, and guidelines-based sentencing continue to remove the human element from sentencing, such as the prerogative of the judge to consider the mitigating or extenuating circumstances of a crime to determine the appropriate length of the incarceration. As the consequence of three strikes laws, the increase in the duration of incarceration in the last decade was most pronounced in the case of life prison sentences, which increased by 83% between 1992 and 2003 .

## **6. American Correctional Association**

The American Correctional Association (ACA), formerly known as the American Prison Association, is the oldest and largest international correctional association in the world. Approximately 80 percent of all state departments of corrections and youth services are active participants. Also included are programs and facilities operated by the Federal Bureau of Prisons and the private sector.

### **Nbsp; Sentencing**

#### **Topic Objective:**

At the end of this topic student would be able to:

Learn about the Types of Sentencing

Develop learning about the history of Sentencing

Understand about the Ideologies of Sentencing

Develop learning about the process of Sentence

### **Definition/Overview:**

**Sentence:** In law, a sentence forms the final act of a judge-ruled process, and also the symbolic principal act connected to his function. The sentence generally involves a decree of imprisonment, a fine and/or other punishments against a defendant convicted of a crime.

### **Key Points:**

#### **1. Types of Sentencing**

Those imprisoned for multiple crimes, will serve either a consecutive sentence (in which the period of imprisonment equals the sum of all the sentences) or a concurrent sentence (in which the period of imprisonment equals the length of the longest sentence). If a sentence gets reduced to a less harsh punishment, then the sentence is said to have been mitigated. Rarely (depending on circumstances) murder charges are mitigated and reduced to manslaughter charges. However, in certain legal systems, a defendant may be punished beyond the terms of the sentence, e.g. social stigma, loss of governmental benefits, or collectively, the collateral consequences of criminal charges.

#### **2. History of Sentencing**

The first use of this word with this meaning was in Roman law, where it indicated the opinion of a jurist on a given question, expressed in written or in oral responsa. It was also the opinion of senators (that was translated into the senatus consultus). It finally was also the decision of the judging organ (both in civil and in penal trials), as well as the decision of the Arbiters. In modern Latin systems the sentence is mainly the final act of any procedure in which a judge, or

more generally an organ is called to express his evaluation, therefore it can be issued practically in any field of law requiring a function of evaluation of something by an organ.

### 3. Ideologies of Sentencing

The sentence meted out depends on the philosophical principle used by the court. The most common philosophies of sentencing are:

Retribution

Deterrence

Denunciation

Incapacitation

Rehabilitation

#### 3.1 Retribution

Retributive justice is a theory of justice that considers that proportionate punishment is a morally acceptable response to crime, with an eye to the satisfaction and psychological benefits it can bestow to the aggrieved party, its intimates and society. In ethics and law, Let the punishment fit the crime is the principle that the severity of penalty for a misdeed or wrongdoing should be reasonable and proportional to the severity of the infraction. The concept is common to most cultures throughout the world. Its presence in the ancient Jewish culture is shown by its inclusion in the law of Moses, specifically in Deuteronomy 19:17-21, and exodus 21:23-21:27, which includes the punishments of life for life, eye for eye, tooth for tooth, hand for hand, foot for foot. Many other documents reflect this value in the world's cultures. However, the judgment of whether a punishment is appropriately severe can vary greatly between cultures and individuals.

Proportionality requires that the level of punishment be scaled relative to the severity of the offending behavior. However, this does not mean that the punishment has to be equivalent to the crime. A retributive system must punish severe crime more harshly than minor crime, but retributivists differ about how harsh or soft the system should be overall. Traditionally, philosophers of punishment have contrasted retributivism with

utilitarianism. For utilitarian, punishment is forward-looking, justified by a purported ability to achieve future social benefits, such as crime reduction. For retributionists, punishment is backward-looking, and strictly for punishing crimes according to their severity. Depending on the retributivist, the crime's level of severity might be determined by the amount of harm, unfair advantage or moral imbalance the crime caused.

### **3.2 Deterrence**

Deterrence is often contrasted with retributivism, which holds that punishment is a necessary consequence of a crime and should be calculated based on the gravity of the wrong done. Deterrence can be divided into three separate categories. Specific deterrence focuses on the individual in question. The aim of these punishments is to discourage the criminal from future criminal acts by instilling an understanding of the consequences. General or indirect deterrence focuses on general prevention of crime by making examples of specific deviants. The individual actor is not the focus of the attempt at behavioral change, but rather receives punishment in public view in order to deter other individuals from deviance in the future. The argument that deterrence, rather than retribution, is the main justification for punishment is a hallmark of the rational choice theory and can be traced to Cesare Beccaria whose well-known treatise *On Crimes and Punishments* condemned torture and the death penalty and Jeremy Bentham who made two distinct attempts during his life to critique the death penalty..

### **3.3 Denunciation**

Denunciation in the context of sentencing philosophy refers to the disapproval of an act by society that is expressed by the imposition of a sentence. This can be considered as one of the purposes of sentencing, as well as being a possible justification for the imposition of a sentence. Denunciation arguments can be used to justify more serious sentences than are required by the principles of retribution and deterrence. Denunciation arguments can also be used to justify the existence of laws which are never in practice enforced; they stand as statements of a society's values rather than working parts of a

criminal justice system.

### **3.4 Incapacitation**

Incapacitation in the context of sentencing philosophy refers to the effect of a sentence in terms of positively preventing (rather than merely deterring) future offending.

Imprisonment incapacitates the prisoner by removing them from the society against which they are deemed to have offended. Cutting off a hand of a thief is also an example; this acts to prevent further thefts in a drastic manner, in addition to its having a deterrent effect on others. Like deterrence, incapacitation can be specific to an individual and/or specific to a particular crime, or can be general in either respect.

### **3.5 Rehabilitation**

Rehabilitation means; To restore to useful life, as through therapy and education or To restore to good condition, operation, or capacity. The assumption of rehabilitation is that people are not natively criminal and that it is possible to restore a criminal to a useful life, to a life in which they contribute to themselves and to society. Rather than punishing the harm out of a criminal, rehabilitation would seek, by means of education or therapy, to bring a criminal into a more normal state of mind, or into an attitude which would be helpful to society, rather than be harmful to society. This theory of punishment is based on the notion that punishment is to be inflicted on an offender so as to reform him/her, or rehabilitate them so as to make their re-integration into society easier.

Punishments that are in accordance with this theory are community service, probation orders, and any form of punishment which entails any form of guidance and aftercare towards the offender. This theory is founded on the belief that one cannot inflict a severe punishment of imprisonment and expect the offender to be reformed and to be able to re-integrate into society upon his release. Although the importance of inflicting punishment on those persons who breach the law, so as to maintain social order, is retained, the importance of rehabilitation is also given priority. Humanitarians have, over the years, supported rehabilitation as an alternative, even for capital punishment.

#### 4. Process of Sentence

Usually the sentence comes after a process in which the deciding organ is put in condition to evaluate whether the analysed conduct complies or not with the legal systems, and eventually which aspects of the conduct might regard which laws. Depending on respective systems, the phases that precede the sentence may vary relevantly and the sentence can be resisted (by both parties) up to a given degree of appeal. The sentence issued by the Appeal court of highest admitted degree immediately becomes the definitive sentence, as well as the sentence issued in minor degrees that is not resisted by the condemned or by the accuser (or is not resisted within a given time). The sentence usually has to be rendered of public domain and in most systems it has to be accompanied by the reasons for its content (a sort of story of the juridical reflections and evaluations that the judging organ used to produce it). A sentence (even a definitive one) can be annulled in some given cases, that many systems usually pre-determine. The most frequent case is related to irregularities found ex-post in the procedure, the most blatant is perhaps in penal cases, when a relevant (often discharging) proof is discovered after the definitive sentence.

In most systems the definitive sentence is unique, in the precise sense that no one can be judged more than once for the same action (apart, obviously, from appeal resistance). Sentences are in many systems a source of law, as an authoritative interpretation of the law in front of concrete cases, thus quite as an extension of the ordinary formal documental system. The sentence is generally issued by the judge in the name of (or on the behalf of) the superior authority of the State.

#### : Nbsp; Appellate Review

##### Topic Objective:

At the end of this topic student would be able to:

Identify Standard or Review and Appellate Review

Learn about the appeal in American Law

Understand the Types of appeal

Develop learning about the appellate Review in American Legal System

Learn about Appellate court

Comprehend the Discretionary review

### **Definition/Overview:**

**Appellate review:** Appellate review is the general term for the process by which courts with appellate jurisdiction take jurisdiction of matters decided by lower courts. It is distinguished from judicial review, which refers to the court's overriding constitutional or statutory right to determine if a legislative act or administrative decision is defective for jurisdictional or other reasons (which may vary by jurisdiction).

### **Key Points:**

#### **1. Standard of Review and Appellate Review**

In law, the standard of review is the amount of deference given by one court (or some other appellate tribunal) in reviewing a decision of a lower court or tribunal. A low standard of review means that the decision under review will be varied or overturned if the reviewing court considers there is any error at all in the lower court's decision. A high standard of review means that deference is accorded to the decision under review, so that it will not be disturbed just because the reviewing court might have decided the matter differently; it will be varied only if the higher court considers the decision to have obvious error. The standard of review may be set by statute, rule or precedent.

## 2. Appeal in American Law

In law, an appeal is a process for requesting a formal change to an official decision. The specific procedures for appealing, including even whether there is a right of appeal from a particular type of decision, can vary greatly from country to country. Even within a jurisdiction, the nature of an appeal can vary greatly depending on the type of case. An appellate court is a court that hears cases on appeal from another court. Depending on the particular legal rules that apply to each circumstance, a party to a court case who is unhappy with the result might be able to challenge that result in an appellate court on specific grounds. These grounds typically could include errors of law, fact, or procedure (in the United States, due process). In different jurisdictions, appellate courts are also called appeals courts, courts of appeals, superior courts, or supreme courts. A party who files an appeal is called an appellant or petitioner, and a party on the other side is called a respondent (in most common-law countries) or an appellee (in the United States). A cross-appeal is an appeal brought by the respondent. For example, suppose at trial the judge found for the plaintiff and ordered the defendant to pay \$50,000. If the defendant files an appeal arguing that he should not have to pay any money, then the plaintiff might file a cross-appeal arguing that the defendant should have to pay \$200,000 instead of \$50,000.

The appellant is the party who, having lost part or all their claim in a lower court decision, is appealing to a higher court to have their case reconsidered. This is usually done on the basis that the lower court judge erred in the application of law, but it may also be possible to appeal on the basis of court misconduct, or that a finding of fact was entirely unreasonable to make on the evidence. The appellant in the new case can be either the plaintiff (or claimant), defendant, or respondent (appellee) from the lower case, depending on who was the losing party. The winning party from the lower court, however, is now the respondent. In unusual cases the appellant can be the victor in the court below, but still appeal. For example, in *Doyle v Olby (Ironmongers) Ltd* [1969] 2 QB 158, the claimant appealed (successfully) on the basis that, although he won in the court below, the lower court had applied the wrong measure of damages and he had not been fully recompensed. An appellee is the party to an appeal in which the lower court judgment was in its favor. The appellee is required to respond to the petition, oral arguments, and legal briefs of the appellant. In general, the appellee takes the procedural posture that the lower court's

decision should be affirmed.

### 3. Types of appeal

There are a number of appeal actions, their differences being potentially confusing, thus bearing some explanation. Three of the most common are an appeal to which the defendant has as a right, a writ of certiorari and a writ of habeas corpus. An appeal to which the defendant has a right cannot be abridged by the court which is, by designation of its jurisdiction, obligated to hear the appeal. In such an appeal, the appellant feels that some error has been made in his trial, necessitating an appeal. A matter of importance is the basis on which such an appeal might be filed: generally appeals as a matter of right may only address issues which were originally raised in trial (as evidenced by documentation in the official record). Any issue not raised in the original trial may not be considered on appeal and will be considered estoppel. A convenient test for whether a petition is likely to succeed on the grounds of error is confirming that (1) a mistake was indeed made (2) an objection to that mistake was presented by counsel and (3) that mistake negatively affected the defendant's trial.

A writ of certiorari, otherwise known as simply as cert, is an order by a higher court directing a lower court to send record of a case for review, and is the next logical step in post-trial procedure. While states may have similar processes, a writ of cert is usually only issued, in the United States, by the Supreme Court, although some states retain this procedure. Unlike the aforementioned appeal, a writ of cert is not a matter of right. A writ of cert will have to be petitioned for, the higher court issuing such writs on limited bases according to constraints such as time. In another sense, a writ of cert is like an appeal in its constraints; it too may only seek relief on grounds raised in the original trial.

A writ of habeas corpus is the last opportunity for the defendant to find relief against his guilty conviction. Habeas corpus may be pursued if a defendant is unsatisfied with the outcome of his appeal and has been refused (or did not pursue) a writ of cert, at which point he may petition one of several courts for a writ of habeas corpus. Again, these are granted at the discretion of the court and require a petition. Like appeals or writs of cert, a writ of habeas corpus may overturn a defendant's guilty conviction by finding some error in the original trial. The major difference is

that writs of habeas corpus may, and often, focus on issues that lay outside the original premises of the trial, i.e., issues that could not be raised by appeal or writs of cert. These often fall in two logical categories: (1) that the trial lawyer was ineffectual or incompetent or (2) that some constitutional right has been violated. As one moves farther down the chain of post-trial actions, relief becomes progressively more unlikely. Knowing the differences between these actions and their intended use are an important tool in increasing one's chances for a favorable outcome. Use of a lawyer is therefore often considered advisable to aid one attempting to traverse the complex post-trial landscape.

#### 4. Appellate Review in American Legal System

In most jurisdictions the normal and preferred way of seeking appellate review is by filing an appeal of the final judgment. Generally, an appeal of the judgment will also allow appeal of all other orders or rulings made by the trial court in the course of the case. This is because such orders cannot be appealed as of right. However, certain critical interlocutory court orders, such as the denial of a request for an interim injunction, or an order holding a person in contempt of court, can be appealed immediately although the case may otherwise not have been fully disposed of.

In American law, there are two distinct forms of appellate review, direct and collateral. For example, a criminal defendant may be convicted in state court, and lose on direct appeal to higher state appellate courts, and if unsuccessful, mount a collateral action such as filing for a writ of habeas corpus in the Federal courts. Generally speaking, "[d]irect appeal statutes afford defendants the opportunity to challenge the merits of a judgment and allege errors of law or fact. ... [Collateral review], on the other hand, provide[s] an independent and civil inquiry into the validity of a conviction and sentence, and as such are generally limited to challenges to constitutional, jurisdictional, or other fundamental violations that occurred at trial." *Graham v. Borgen*, \_\_ F 3d. \_\_ (7th Cir. 2007) (no. 04-4103) (slip op. at 7). In Anglo-American common law courts, appellate review of lower court decisions may also be obtained by filing a petition for review by prerogative writ in certain cases. There is no corresponding right to a writ in any pure or continental civil law legal systems, though some mixed systems such as Quebec recognize these prerogative writs.

## 5. Appellate court

An appellate court is any court of law that is empowered to hear an appeal of a trial court or other lower tribunal. In most jurisdictions, the court system is divided into at least three levels: the trial court, which initially hears cases and reviews evidence and testimony to determine the facts of the case; at least one intermediate appellate court; and a supreme court (or court of last resort) which primarily reviews the decisions of the intermediate courts. A supreme court is therefore itself a kind of appellate court. Appellate courts worldwide can operate by varying rules. For example, the Isle of Man's traditional local appellate court is the Staff of Government Division which has only two Justices, titled "Deemsters," whose decisions are joined to the original trial decision. They almost always have a majority, if either Deemster agrees with the trial Judge.

## 6. Discretionary review

Discretionary review is the authority of appellate courts to decide which appeals they will consider from among the cases submitted to them. This offers the judiciary a filter on what types of cases are appealed, because judges have to consider in advance which cases will be accepted. The appeals court will then be able to decide substantive cases with the lowest opportunity cost. Discretionary review contrasts with mandatory review, in which appellate courts must consider all appeals submitted. For the Supreme Court of the United States, this discretion is termed the granting of a writ of certiorari ("cert"). This discretion was not granted to the Court until 1891, after its docket became clogged with pro forma appeals from various lower courts. Congress then created the United States court of appeals system divided into nine regional circuits, with the Supreme Court generally only hearing cases from the Appeals level. The Judiciary Act of 1925 further expanded certiorari, authorizing the court to determine any case from a lower level concerning "federal questions of substance." Today, 98 percent of federal cases are decided at the Appeals level.

A similar model holds in most U.S. state judiciaries, with discretionary review only available to the state's supreme court, and the appeals courts bound to hear all appeals. In North Carolina, the supreme court's choice to exercise discretionary review depends not on whether the case was decided correctly with regard to the defendant's guilt, but whether the particular legal questions

raised in the appeal have a public interest, involve important legal principles, or conflict with precedents set by prior supreme courts. In Texas, discretionary review is granted to the supreme court for all but death penalty cases, which the court is required to review, bypassing the Texas Courts of Appeals. The European Commission on Human Rights exercised discretionary review against the petitions it received under the European Convention on Human Rights, rejecting those that it determined were ill-founded (by showing no apparent violation), which has allowed it to manage its caseload accordingly. By doing so, the Commission has evolved from a "service organization" to a "commonweal organization" whose decisions create legal precedent for future cases affecting the public.

- In Section 2 of this course you will cover these topics:
  - Nbsp; Jails And Detention Facilities
  - Nbsp; Probation
  - Nbsp; Intermediate Sanctions
  - Nbsp; Imprisonment
  - Nbsp; State And Local Prison Systems

### **Topic : Nbsp; Jails And Detention Facilities**

#### **Topic Objective:**

*At the end of this topic the student will be able to understand:*

Intimate searches

Immigration detention

Time limits of Detention

Detention of suspects

Detention in US Legal System

**Definition/Overview:**

**Detention:** Detention generally refers to a state or government holding a person in a particular area (generally called a detention centre), either for interrogation, as punishment for a wrong, or as a precautionary measure while that person is suspected of posing a potential threat.

**Key Points:****1. Detention in US Legal System**

The term can also be used in reference to the holding of property, for the same reasons. The process of detainment may or may not have been preceded with arrest. The prisoners in Guantanamo Bay are for example referred to as "detainees". Any form of imprisonment can be called detention, although the term is associated with persons who are being held without warrant or charge. The length of detention of suspected terrorists, with the justification of taking an action that would aid counter-terrorism, varies according to country or situation, as well as the laws which regulate it. The Terrorism Act 2006 in the United Kingdom lengthened the 14-day limit for detention without an arrest warrant or an indictment from the Terrorism Act 2000 to 28 days. A controversial Government proposal for an extension to 90 days was rejected by the House of Commons. Regular English criminal law requires law enforcement to have shown cause of reasonable suspicion when detaining someone. Indefinite detention of an individual occurs frequently in wartime under the laws of war. This has been applied notably by the United States after the September 11, 2001 attacks. Before the Combatant Status Review Tribunals, created for reviewing the status of the Guantanamo detainees, the United States has argued that the United States is engaged in a legally cognizable armed conflict to which the laws of war apply, and that it therefore may hold captured al Qaeda and Taliban operatives throughout the duration of that conflict, without granting them a criminal trial.

## 2. Detention of suspects

Detention of suspects is the process of keeping a person who has been arrested in a police-cell, prison or other detention centre before trial or sentencing. Pre-charge detention refers to the period of time that an individual can be held and questioned by police, prior to being charged with an offence. Not all countries have such a concept, and in those that do, the period for which a person may be detained without trial varies from jurisdiction to jurisdiction.

### 3. Time limits of Detention

In terrorism cases, a person may be detained for a maximum of 28 days. The United Kingdom's Home Secretary, Jacqui Smith has proposed that the period of for which detention without charge is lawful should be extended from 28 to 42 days. The initial passing of this legislation on 11 June 2008 in the House of Commons prompted the then Shadow Home Secretary, David Davis, to resign as an MP and conduct a by-election campaign on the issue. The legislation was defeated in the House of Lords. Otherwise (and subject to exceptions), a person may be detained for a maximum of 96 hours from the relevant time (normally the time an arrested person arrives at the first police station that he is taken to), in line with the following restrictions:

Authorizing person	Test to be applied	Requirement for review	Maximum limit
Custody Officer	insufficient evidence to charge the arrested person and reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him		
Review	insufficient evidence to charge the	6 hours after the	24 hours from

Officer	arrested person and reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him	decision to detain or 9 hours after the last review	the relevant time
Superintendent or above	the Review Officer has made two reviews reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him offence for which he is under arrest is an indictable offence investigation is being conducted diligently and expeditiously		<b>36 hours</b> from the relevant time
Magistrates' Court	application made on oath by a constable satisfied that there are reasonable grounds for believing that his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him; an offence for which he is under arrest is an indictable offence; and	The Magistrates' Court can only grant or extend a warrant for up to 36 hours.	<b>96 hours</b> from the relevant time

	the investigation is being conducted diligently and expeditiously.		
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**Table 1: Limits of Detention**

On expiry of the time limit, the arrested person must be released, either on or without police bail and may not be rearrested without warrant for the same offence unless new evidence has come to light since the original arrest.

#### 4. *Intimate searches*

An intimate search is a search of the bodily orifices (other than the mouth). It should be conducted by a suitably qualified person unless this is impracticable and done in the presence of two other people. An intimate search requires the authorization of an inspector and may only be made in one of the following circumstances:

Condition	Consent	Place
The inspector reasonably believes that the detainee has concealed on him anything he could use and might use in police detention or custody of the court to cause physical injury to himself or others; and that the article in question cannot be found unless the detainee is intimately searched.	Consent is not necessary for the search to take place and reasonable force may be used to conduct the search.	Police station, hospital, surgery or other medical premises.
The inspector reasonably believes that the detainee may have a Class A drug concealed on him; that the detainee was in possession	Consent for the search is necessary. If the detainee refuses to give consent, proper inferences may be drawn but	Hospital, surgery or other medical premises.

of the drug before his arrest with intention to illegally supply or export it; and that it cannot be found unless the detainee is intimately searched.	force may not be used.	
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**Table 2: Different Circumstances of Detention**

### 5. Immigration detention

Immigration detention is the policy of holding individuals suspected of visa violations, illegal entry or unauthorized arrival in detention until a decision is made by immigration authorities to grant a visa and release them into the community, or to repatriate them to their country of departure. Mandatory detention is the practice of compulsorily detaining or imprisoning people seeking political asylum, or who are considered to be illegal immigrants or unauthorized arrivals into a country.

In the United States, a similar practice began in the early 1980s with Haitians and Cubans detained at Guantanamo Bay, and other groups such as Chinese in jails and detention centers on the mainland. The practice was made mandatory by legislation passed in 1996 in response to the Oklahoma City bombing, and has come under criticism from organizations such as Amnesty International, Human Rights Watch, Human Rights First, all of whom have released major studies of the subject, and the ACLU. About 31,000 non-citizens are held in immigration detention on any given day, including children, in over 200 detention centers, jails, and prisons nationwide.

One of the most recent facility to open is the T. Don Hutto Residential Center, which opened in 2006 specifically to house non-criminal families. There are other significant facilities in Elizabeth, New Jersey, Oakdale, Louisiana, Florence, Arizona, Miami, Florida, Seattle, York, Pennsylvania, Batavia, New York, Aguadilla, Puerto Rico and all along the Texas-Mexico border.

About 83 mostly young individuals have died in detention of the United States Immigration and Customs Enforcement or shortly afterwards during the five years between 2003 to 2008, and medical neglect may have contributed to 30 of those deaths. On August 6, 2008, 34 year old New Yorker Hiu Lui Ng died in the detention of United States Immigration and Customs Enforcement. The editors of the New York Times condemned the death and urged that the system must be fixed. The Immigration and Customs Enforcement has stated that the number of deaths per capita in detention is dramatically lower for ICE detainees than for U.S. prison and jail populations, that they provide "the best possible healthcare" and that the nation as a whole is "experiencing severe shortages of qualified health professionals" In May 2008 Congress began considering a bill to set new standards for immigrant detainee healthcare.

### **Nbsp; Probation**

#### **Topic Objective:**

At the end of this topic student would be able to:

Develop learning regarding General Conditions of Probation

Understand about the history of probation: origins and evolution

Learn the types of supervision (Probation)

Develop learning about the violation of Probation

Learn about the community Based Corrections

Learn about the Probation and Parole Unit

**Definition/Overview:**

**Probation:** Probation is the suspension of a jail sentence - the criminal who is on probation has been convicted of a crime, but instead of serving jail time, has been found by the Court to be amenable to probation and will be returned to the community for a period in which they will have to abide to certain conditions set forth by the Court under the supervision of a probation officer.

**Community Based Corrections:** Community Based Corrections is a division of ACT Corrective Services and consists of the Probation and Parole Unit, Rehabilitation Programs Unit and the Sentence Administration Board.

**Key Points:****1. General Conditions of Probation**

General conditions of Probation may include maintaining employment, abiding to a curfew, living where directed, abstaining from unlawful behavior, following the probation officer's orders, not absconding, and refraining from contact with other individuals, who may include victims of the original crime (such as a former partner in a domestic violence case), potential victims of similar crimes (such as minors when the crime involves child sexual abuse), potential witnesses, or those who have partnered with the offender in the earlier crime. Usually the offender is supervised by a probation officer, to monitor their performance during the probation period. The probation officer helps the offender to adapt to living in the community; to guide and help them to behave in a lawful and responsible way.

## 2. History of probation: origins and evolution

The concept of probation, from the Latin word *probatio* - meaning testing period - has historical roots in the practice of judicial reprieve. In English Common Law the Courts could temporarily suspend the execution of a sentence to allow the defendant to appeal to the Crown for a pardon. Probation first developed in the United States when John Augustus, a Boston boot maker, persuaded a judge in the Boston Police Court in 1841 to give him custody of a convicted offender, a drunkard, for a brief period and then helped the man to appear rehabilitated by the time of sentencing. Even before John Augustus, the practice of suspended sentence was used as early as 1830, in Boston, Massachusetts and became widespread in U.S. Courts, although there was no statutory authorization for such a practice. At first, judges, most notably Peter Oxenbridge Thatcher of Boston, used release on recognizance or bail and simply failed to take any further legal action. In 1878 the mayor of Boston hired a former police officer, one Captain Savage, to become what many recognize as the first official probation officer. By the mid-19th century, however, many Federal Courts were using a judicial reprieve to suspend sentence, and this posed a legal question. In 1916, the United States Supreme Court held that a Federal Judge (Killets) was without power to suspend a sentence indefinitely, which is known as the Killets Decision. This famous court decision led to the passing of the National Probation Act of 1925, thereby, allowing courts to suspend the imposition of a sentence and place an offender on probation.

Massachusetts developed the first state wide probation system in 1880, and by 1920, 21 other states had followed suit. With the passage of the National Probation Act on March 5, 1925, signed by President Calvin Coolidge, the U.S./Federal Probation Service was established to serve the U.S. Courts. On the state level, pursuant to the Crime Control and Consent Act passed by Congress in 1936, a group of states entered into agreement by which they would supervise probationers and parolees for each other. Known as the Interstate Compact For the Supervision of Parolees and Probationers, the agreement was originally signed by 25 states in 1937. In 1951, all the states in the United States of America had a working probation system and ratified the Interstate Compact Agreement. In 1959, the newly adopted states, Alaska and Hawaii, in addition the Commonwealth of Puerto Rico, U.S. Virgin Islands and the territories of Guam and

American Samoa ratified the act as well. Probation began as a humanitarian effort to allow first-time and minor offenders a second chance. Early probationers were expected not only to obey the law but also to behave in a morally acceptable fashion. Officers sought to provide moral leadership to help shape probationers' attitudes and behavior with respect to family, religion, employment, and free time. They aimed to ensure that this was enforced as well, and early probationers were given the opportunity to prove themselves and possibly even reduce their sentence.

During the 1920s through the 1950s, the major developments in the field of psychology led probation officers to shift their emphasis from moral leadership to therapeutic counseling. This shift brought three important changes. First, the officer no longer primarily acted as a community supervisor charged with enforcing a particular morality. Second, the officer became more of a clinical social worker whose goal was to help the offender solve psychological and social problems. Third, the offender was expected to become actively involved in the treatment. The pursuit of rehabilitation as the primary goal of probation gave the officer extensive discretion in defining and treating the offender's problems. Officers used their judgment to evaluate each offender and develop a treatment approach to the personal problems that presumably had led to crime.

Many states offered to dismiss or expunge the conviction if the probationer fulfilled the terms of the probation. During the 1960s, major social changes swept across the United States. These changes also affected the field of community corrections. Rather than counseling offenders, probation officers provided them with concrete social services such as assistance with employment, housing, finances, and education. This emphasis on reintegrating offenders and remedying the social problems they faced was consistent with federal efforts to wage a War on Poverty. Instead of being a counselor or therapist, the probation officer served as an advocate, dealing with private and public institutions on the offender's behalf. In the late 1970s the orientation of probation changed again as the goals of rehabilitation and reintegration gave way to risk management. This approach, still dominant today, seeks to minimize the probability that

an offender will commit a new offense. Risk management reflects two basic goals. First, in accord with the deserved-punishment ideal, the punishment should fit the offense, and correctional intervention should neither raise nor lower the level of punishment. Second, according to the community protection criterion, the amount and type of supervision are determined according to the risk that the probationer will return to a life out of compliance with the law.

### **3. Types of supervision (Probation)**

#### **3.1 Intensive probation, home detention, GPS monitoring**

These are the highest levels of probation supervision to closely monitor the offender released into a community. Violent criminals, gang members, habitual offenders, and sex offenders are typically supervised at this level. Offenders under such supervision are deemed to have waived the constitutional rights under the fourth amendment regarding search and seizure, and are subject to unannounced home visits, surveillance, and the use of electronic monitoring or satellite tracking. GPS monitoring and home detention are common in juvenile cases, even when the underlying crime is minor.

#### **3.2 High supervision:**

Offenders under high supervision are subject to monthly home and office visits and random drug test.

#### **3.3 Standard supervision:**

Offenders under standard supervision are subject to similar supervision as those under high supervision, that contacts in the office and field may be quarterly instead of monthly.

#### **3.4 Unsupervised probation:**

Unsupervised probation does not involve direct supervision under a specifically appointed probation officer. Terms of probation may be expected to be completed within a specific duration of time. For example, if given 1 year of unsupervised probation, a

probationer might be required to have his/her terms (i.e. community service, court costs, etc) completed within the first 6 months. For the remaining 6 months, he/she must maintain good and lawful behavior, may not enter bars/taverns/liquor stores, submit their right to having a firearm, and give up their 4th Amendment rights to search and seizure. Probationers may be asked to meet with their officers toward the end of the term of unsupervised probation; however, if they complete their terms early, may not require meeting with their officer at all. If terms are not completed, their officer may file a petition to revoke probation.

### **3.5 Informal supervision:**

Informal supervision is a type of unsupervised probation that is unconnected to a suspended jail sentence, i.e., the individual is placed on informal supervision without having been found to have committed a crime. Probation terms such as search clauses or drug testing may be instituted. At the end of the informal supervision period, the case is dismissed. Usually the offender is supervised by a probation officer, to monitor their performance during the probation period. The probation officer helps the offender to adapt to living in the community; to guide and help them to behave in a lawful and responsible way. Conversely, the probation officer also monitors the offender to ensure a lack of future criminal behavior. The probation officer may have to revoke the offender's probation or have to arrest the offender.

## **4. Violation of Probation**

A probation officer may at his discretion issue a probationer a warning, or order him to appear before a court for a probation violation hearing. At the hearing, the probation officer will typically request additional punishment, usually involving incarceration. A prisoner released on parole may have parole revoked, and be recalled to prison. There is no "hard and fast" rule for what type of violation will result in a hearing. One violation that is almost always considered serious is failure to appear for scheduled meetings with the probation officer. Being found in possession of illegal drugs, or being arrested for any crime, is likely to result in a hearing. How seriously the violation is regarded may depend upon the facts of the original offense for example, if a person has been convicted of a gang-related offense, "association with known

criminals" may be viewed as a more serious violation than if the person were on probation for driving a car with a suspended license.

## **5. Community Based Corrections**

Community-based correction programs began in the 1970s, 1980s, and 1990s. The programs offer an alternative to incarceration within the prison system. Many criminologists believed a significant number of offenders did not need incarceration in high security prison cells. Some inmates, who might otherwise have been ready to turn away from a life of crime, instead became like the hardened criminals they associated with in prison. In response, states, counties, and cities established local correctional facilities and programs that became known as community-based corrections. These facilities, located in neighborhoods, allowed offenders normal family relationships and friendships as well as rehabilitation services such as counseling, instruction in basic living skills, how to apply for jobs, and work training and placement.

At the beginning of the twenty-first century, the fastest growing group in prison and jail population was women. According to the U.S. Department of Justice's Bureau of Justice Statistics, there were 91,612 women in state and federal prisons at the end of 2000, or 6.6 percent of the nation's total prison population. Ten times that many or about 900,000 were on probation or parole. Back in 1970 there were just 5,600 incarcerated women, 12,300 in 1980, and in 1990 approximately 40,000. From 1990 until the end of 2000 the number of imprisoned women grew by 125 percent. Eighty-five percent of women prisoners committed nonviolent crimes, mostly drug offenses and theft. The astounding increase in the number of incarcerated women in the 1990s was largely due to drug arrests. In the early 1980s federal and state governments initiated a "War on Drugs," in reaction to a huge increase in drug related offenses throughout the United States.

## **6. Probation and Parole Unit**

The Probation & Parole Unit provides advice to Courts and releasing authorities on the background and attitudes of offenders on Community Based Orders (e.g. bail supervision, probation, and parole) and to refer offenders to appropriate community based or residential

services to assist with addressing a variety of issues (e.g drug and alcohol abuse, grief and loss issues, self esteem and relationship issues). The Unit aims to reduce offending by the use of empirically sound risk assessment tools and a brokerage case management model, which targets criminogenic needs.

### **: Nbsp; Intermediate Sanctions**

#### **Topic Objective:**

At the end of this topic student would be able to:

Have an Overview and background of Intermediate Sanctions

Identify Disqualified Person

Learn about Intermediate Sanctions for Organization Manager

Develop learning about safe Harbor Provision of the Law

Identify Penalties under Intermediate Sanctions

#### **Definition/Overview:**

**Intermediate sanctions** is a term used in regulations enacted by the United States Internal Revenue Service that is applied to non-profit organizations who engage in transactions that inure to the benefit of a disqualified person within the organization. These regulations allow the IRS to penalize the organization and the disqualified person receiving the benefit. Intermediate sanctions may be imposed either in addition to or instead of revocation of the exempt status of the organization.

**Key Points:****1. Overview and background of Intermediate Sanctions**

The Taxpayer Bill of Rights 2 which came into force on July 30, 1996 added section 4958 to the Internal Revenue Code. Section 4958 adds intermediate sanctions as an alternative to revocation of the exempt status of an organization when private persons benefit from transactions with a non-profit organization. Intermediate Sanctions may be imposed on any disqualified person who receives an excess benefit from a covered non-profit organization and on each organization manager who approves an excess benefit. If you are a disqualified person you are subject to having participated in an excess benefit transaction, if the transaction is so defined.

Being a disqualified person does not automatically result in a finding that a transaction involves an excess benefit. If you are not a disqualified person, then you cannot be subject to an excess benefit (your transaction with the non-profit organization is considered to be at arms length). If there is a finding that there has been an excess benefit the disqualified person must reimburse the organization to place the organization back in the position it was in before the excess benefit transaction was completed. As well, there are stiff interest penalties and excise penalties in excess of 200%. The organizational managers who participated in the transaction may also be fined an aggregate of \$10,000 per violation and are jointly and severally liable for payment of such penalty. These penalties are cumulative, thus an individual may be liable as a disqualified person and as an organization manager.

**2. Disqualified Person**

You are a disqualified person if you are a person who, during five years beginning after September 13, 1995, and ending on the date of the transaction in question, were in a position to exercise substantial influence over the affairs of the exempt organization. Note: You can be an individual, another organization, a partnership or unincorporated association, trust or estate. In affiliated organizations, your substantial influence must be determined separately for each organization but benefits provided by a controlled entity will be treated as being provided by the exempt organization. A person may be a disqualified for more than one organization. The intermediate sanction statute identifies certain persons as having substantial influence as a

matter of law such persons are conclusively presumed to be disqualified persons. The temporary regulations identify additional categories of those who have a substantial influence. The IRS considers these individuals to be presumptively disqualified.

**Under the statute, the following are disqualified:**

A family member (spouse, siblings and their spouses, ancestors, children, grandchildren, great grandchildren, and spouses of children, grandchildren and great grandchildren) of a disqualified person. A legally adopted child is a child.

An organization (corporation, partnership, trust or estate) owned 35% or more, directly or indirectly, by a disqualified person, or family member(s). This does not include voting rights held only as a director, trustee, or other fiduciary, without any stock, profit or other beneficial interest.

**Other persons defined by the regulations as having substantial interest include:**

Members of the governing board of the organization who are entitled to vote on matters over which the governing body has authority (e.g., directors, elders, trustees, steering committee members, etc.).

Executive officers of the organization, such as president, chief executive officer, and chief operating officer the exact title is used is irrelevant; includes any individual who has ultimate responsibility for implementing board decisions or for supervising the management, administration or operations of the organization. Responsibilities may be shared by more than one individual. If a person has a title of president, chief executive officer or chief operating officer that person will be disqualified unless they can show otherwise.

The treasurer or chief financial officer including anyone who has or shares responsibility for managing the organization's financial assets, regardless of actual title. Several persons may share this responsibility. Once again, any person with the title of treasurer or chief financial officer will be considered to have this ultimate responsibility unless shown otherwise.

If a hospital participates in a provider-sponsored organization then any person who has a material financial interest in the organization (e.g., a person involved in a joint venture with the organization).

### **3. Intermediate Sanctions for Organization Manager**

An organization manager is any officer, director, trustee, or person having similar powers or responsibilities, regardless of his or her title. A person is an officer if specifically so designated under the articles or bylaws of the organization, or if he or she regularly exercises general authority to make administrative or policy decisions for the organization. If a person only makes recommendations, but cannot implement decisions without approval of a superior, that person is not an officer. The regulations make it clear that a contractor who acts solely in a capacity as an attorney, accountant, or investment manager or advisor is not an officer.

An organization manager includes anyone on a committee of the board (whether a member of the board), if the organization is claiming that the rebuttable presumption of reasonableness is based on the committee's (or the designee's) actions. If the committee is responsible for determining the reasonableness of a transaction, and this determination is relied upon by the organization, every member of the committee will be considered an organization manager. Silence or inaction can be participation by the organization manager if the manager is under a duty to speak or act, as well as any affirmative action. Abstention is considered consent to a transaction. If a manager has opposed the transaction in a manner consistent with his/her responsibilities to the organization, the manager will not be considered to have participated in the action.

### **4. Safe Harbor Provision of the Law**

Congress, in the legislative history, intended to create a rebuttable presumption of reasonableness, or safe harbor. Under this safe harbor, compensation is presumed to be reasonable and a property transfer is presumed to be at fair market value if: (1) the compensation arrangement or terms of transfer are approved, in advance, by an authorized body of the exempt organization, composed entirely of individuals without a conflict of interest, (2) the board or committee obtained and relied upon appropriate data as to comparability in making its determination; and (3) the board or committee adequately documented the basis for its determination, concurrently with making the decision. The disqualified person or organization manager has the initial burden of proving that the compensation was reasonable. If the three criteria above are met, the burden of proof shifts to the IRS and the IRS must prove that the

compensation was unreasonable. The IRS can rebut the presumption with sufficient contrary evidence showing the compensation was not reasonable or showing a transfer not to be at fair market value.

## **5. Penalties under Intermediate Sanctions**

The intermediate sanction provision goes on to create a penalty which is essentially a claw back of any benefits received plus a penalty as well as excise penalties that may be in excess of 200% of the benefit received. The organization must be returned to the state it was in, to the extent possible, before the person received the excess benefit. While the contract may be modified to prevent any excess benefit once any penalties are paid, organization managers may be liable for penalties up to \$10,000 and held jointly and severally liable. In order to prevent the IRS's invocation of intermediate sanctions any individual serving on the governing body of the organization may not have a conflict of interest regarding the transaction and if they are on the governing body and have a conflict they may answer questions posed by other members, but they must recuse themselves in the decision making process including debate.

### **: Nbsp; Imprisonment**

#### **Topic Objective:**

At the end of this topic student would be able to:

Learn about the History of Imprisonment

Identify Modern Prisons

Comprehend about the Life imprisonment

Develop learning about Life Imprisonment in United Kingdom

Learn about Life Imprisonment in United States

**Definition/Overview:**

**Imprisonment:** Imprisonment is a substantial penalty which should only be made available to the courts for a particular offence when it is merited by the seriousness of the offence. The availability of imprisonment is precedent for an enormous range of criminal behavior e.g. where there is a clear threat to public health or safety or public order; personal violence; substantial loss or damage to property

**Key Points:****1. History of Imprisonment**

For most of history, imprisoning has not been a punishment in itself, but rather a way to confine criminals until corporal or capital punishment was administered. There were prisons used for detention in Jerusalem in Old Testament times. Dungeons were used to hold prisoners; those who were not killed or left to die there often became galley slaves or faced penal transportations. In other cases debtors were often thrown into debtor's prisons, until they paid their jailers enough money in exchange for a limited degree of freedom. Only in the 19th century, beginning in Britain, did prisons as we know them today become commonplace. The modern prison system was born in London, as a result of the views of Jeremy Bentham. The notion of prisoners being incarcerated as part of their punishment, and not simply as a holding state till trial or hanging, was at the time revolutionary.

The first "modern" prisons of the early 19th Century were sometimes known by the term "penitentiary" (a term still used by some prisons in the USA today): as the name suggests, the goal of these facilities was that of penance by the prisoners, through a regimen of strict disciplines, silent reflections, and maybe forced and deliberately pointless labor on treadwheels and the like. This "Auburn system" of prisoner management was often reinforced by elaborate prison architectures, such as the separate system and the panopticon. It was not until the late 19th Century that rehabilitation through education and skilled labor became the standard goal of prisons.

## 2. Modern Prisons

Modern prison designs have sought to increasingly restrict and control the movement of prisoners throughout the facility while permitting a maximal degree of direct monitoring by a smaller corrections staff. As compared to traditional large landing-cellblock designs which were inherited from the 19th century and which permitted only intermittent observation of prisoners, many newer prisons are designed in a decentralized "podular" layout. Smaller, separate and self-contained housing units known as "pods" or "modules" are designed to hold between sixteen and fifty prisoners each, and are arranged around exercise yards or support facilities in a decentralized "campus" pattern. A small number of corrections officers, sometimes a single officer, is assigned to supervise each pod. The pods contain tiers of cells arranged around a central control station or desk from which a single officer can monitor all of the cells and the entire pod, control cell doors, and communicate with the rest of the prison. Pods may be designed for high-security "indirect-supervision", in which officers in segregated and sealed control booths monitor smaller numbers of prisoners confined to their cells.

An alternative is "direct-supervision", in which officers work within the pod and directly interact with and supervise prisoners, who may spend the day outside their cells in a central "dayroom" on the floor of the pod. Movement in or out of the pod to and from exercise yards, work assignments or medical appointments can be restricted to individual pods at designated times, and is generally centrally controlled. Goods and services, such as meals, laundry, commissary, educational materials, religious services and medical care can increasingly be brought to individual pods or cells as well. Conversely, despite these design innovations, overcrowding at many prisons, particularly in the U.S., has resulted in a contrary trend, as many prisons are forced to house large numbers of prisoners, often hundreds at a time, in gymnasiums or other large buildings that have been converted into massive open dormitories. Lower-security prisons are often designed with less restrictive features, confining prisoners at night in smaller locked dormitories or even cottage or cabin-like housing while permitting them freer movement around the grounds to work or activities during the day.

### **3. Life imprisonment**

Life imprisonment or life incarceration is a sentence of imprisonment for a serious crime, often for most or even all of the criminal's remaining life, but in fact for a period which varies between jurisdictions: many countries have a maximum possible period of time (usually 7 to 50 years) a prisoner may be incarcerated, or require the possibility of parole after a set amount of time. Examples of crimes which can result in life imprisonment include murder and rape, especially if the person in question has committed these acts multiple times. In almost all jurisdictions without capital punishment, life imprisonment (especially without the possibility of parole) constitutes the most severe form of criminal punishment. Only a small number of jurisdictions have abolished both.

### **4. Life Imprisonment in United Kingdom**

The average sentence is about 15 years before the first parole hearing, although those convicted of exceptionally grave crimes remain behind bars for considerably longer; Ian Huntley was given a tariff of 40 years. Some receive whole life tariffs and die in prison, such as Myra Hindley. Various media sources estimate that there are currently between 35 and 50 prisoners in England and Wales who have been issued with whole life tariffs, issued by either the High Court or the Home Office. These include Ian Brady, Donald Neilson, Dennis Nilsen and Robert Black. Prisoners jailed for life are released on a life licence if the parole board authorizes their release. The prisoner must satisfy the parole board that they are remorseful, understand the gravity of their crime and pose no future threat to the public. They are subject to a possible lifelong recall to prison should they breach their parole conditions.

### **5. Life Imprisonment in United States**

There are many states in USA where a convict can be released on parole after a decade or more has passed. For example, sentences of "15 years to life" or "25 years to life" may be given; this is called an "indeterminate life sentence", while a sentence of "life without the possibility of parole" is called a "determinate life sentence". Even when a sentence specifically denies the possibility of parole, government officials may have the power to grant amnesty or reprieves, or commute a sentence to time served. Under the federal criminal code, however, with respect to offenses committed after December 1, 1987, parole has been abolished for all sentences handed

down by the federal system, including life sentences, so a life sentence from a federal court will result in imprisonment for the life of the defendant, unless a pardon or reprieve is granted by the President.

### **: Nbsp; State And Local Prison Systems**

#### **Topic Objective:**

At the end of this topic student would be able to:

Learn about the Prison System of USA

Develop learning regarding Prison System under Federalism

Identify Duration of incarceration

Understand the Security levels in US Jails

Develop learning about the Incarceration rate

Learn about the Comparison of US Prison System with other countries

Comprehend the Prison conditions

#### **Definition/Overview:**

**Local and State Prisons in USA:** Prisons in the United States are operated under strict authority of both the federal and state governments as incarceration is a concurrent power under the Constitution of the United States. Imprisonment is one of the main forms of punishment for the commission of felony offenses in the United States. Less serious offenders, including those convicted of misdemeanor offenses, may be sentenced to a short term in a local jail or with alternative forms of sanctions such as community corrections (halfway house), house arrest, probation, and/or restitution. In the United States, prisons are operated at various levels of security, ranging from minimum-security prisons that mainly house non-violent offenders to Supermax facilities that house well-known criminals and terrorists such as Terry Nichols,

Theodore Kaczynski, Eric Rudolph, Zacarias Moussaoui, and Richard Reid.

### **Key Points:**

#### **1. Prison System of USA**

The United States has the highest documented incarceration rate, and total documented prison population in the world. As of year-end 2007, a record 7.2 million people were behind bars, on probation or on parole. Of the total, 2.3 million were incarcerated. More than 1 in 100 American adults were incarcerated at the start of 2008. The People's Republic of China ranks second with 1.5 million, while having four times the population, thus having only about 18% per the US incarceration rate.

#### **2. Prison System under Federalism**

The federal government, states, counties, and many individual cities have facilities to confine people. Generally, "prison" refers to facilities for holding convicted felons (offenders who commit crimes where the sentence is more than one year). Individuals awaiting trial, being held pending citations for non-custodial offenses, and those convicted of misdemeanors (crimes which carry a sentence of less than one year), are generally held in county jails. In most states, cities operate small jail facilities, sometimes simply referred to as "lock-ups", used only for very short-term incarceration can be held for up to 72 business hours or up to five days until the prisoner comes before a judge for the first time or receives a citation or summons before being released or transferred to a larger jail. Some states operate "unified" systems, where the state operates all the jails and prisons. The federal government also operates various "detention centers" in major urban areas or near federal courthouses to hold defendants appearing in federal court.

Many of the smaller county and city jails do not classify prisoners (that is, there is no separation by offense type and other factors). While some of these small facilities operate as "close security" facilities, to prevent prisoner-on-prisoner violence and increase overall security, others may put many prisoners into the same cells without regard to the criminal histories of the

prisoners. Other local jails are large and have many different security levels. For example, one of the largest jails in the United States is Cook County Jail in Cook County (located in Chicago). This facility has eleven different divisions (including one medical unit and two units for women prisoners), each classified at a different security level, ranging from dormitory style open housing to super-secure lock-down. In California, to prevent violence, prisoners are segregated by race, ethnicity, and sexual orientation while held in county jails and in the California Department of Corrections and Rehabilitation's reception centers, where newly committed prisoners are assessed prior to being transferred to their "mainline" (long-term) institutions.

### **3. Duration of incarceration**

A judge sentences a person convicted of a crime. The length of the prison term depends upon multiple factors including the severity and type of the crime, state and/or federal sentencing guidelines, the convicted's criminal record, and the personal discretion of the judge. These factors may be different in each state and in the federal system as well. The vast majority of criminal convictions arise from plea bargains, in which an agreement is made between prosecutors and defense counsel for the defendant to plead guilty to a lesser charge for a lesser sentence than they would receive if found guilty at trial.

Some prisoners are given life sentences. In some states, a life sentence means life, without the possibility of parole. In other states, people with life sentences are eligible for parole. In some cases the death penalty may be applied. Many legislatures continued to reduce discretion in both the sentencing process and the determination of when the conditions of a sentence have been satisfied. Determinate sentencing, use of mandatory minimums, and guidelines-based sentencing continue to remove the human element from sentencing, such as the prerogative of the judge to consider the mitigating or extenuating circumstances of a crime to determine the appropriate length of the incarceration. As the consequence of "three strikes laws," the increase in the duration of incarceration in the last decade was most pronounced in the case of life prison sentences, which increased by 83% between 1992 and 2003.

#### 4. Security levels in US Jails

Prisoners reside in different facilities that vary by security level, especially in security measures, administration of inmates, type of housing, and weapons and tactics used by corrections officers. The federal government's Bureau of Prisons uses a numbered scale from one to five to represent the security level. Level five is the most secure, while level one is the least. State prison systems operate similar systems. California, for example, classifies its facilities from Reception Center through Levels I through V (minimum to maximum security) to specialized high security units (all considered Level V) including Security Housing Unit (SHU) California's version of supermax and related units. As a general rule, county jails, detention centers, and reception centers, where new commitments are first held either while awaiting trial or before being transferred to "mainline" institutions to serve out their sentences, operate at a relatively high level of security, usually close security or higher.

Supermax prison facilities provide the highest level of prison security. These units hold those considered the most dangerous inmates. These include inmates who have committed assaults, murders, or other serious violations in less secure facilities, and inmates known to be or accused of being prison gang members. Most states have either a supermax section of a prison facility or an entire prison facility designated as a supermax. The United States Federal Bureau of Prisons operates multiple supermax facilities. One Federal supermax is deserving of special note: ADX Florence, located in Florence, Colorado, also known as the "Alcatraz of the Rockies", widely considered to be perhaps the most secure prison in the United States. ADX Florence has a standard supermax section where assaultive, violent, and gang-related inmates are kept under normal supermax conditions of 23 hour confinement and abridged amenities. However, ADX Florence also has a "special" ultramax section where international and domestic spies, traitors, terrorists, and other elements the Federal Government of the United States designates as especially deserving of punishment but is unable to execute (due to the decision of a jury) or who have not exhausted their appeals as of yet. ADX Florence is considered to be of a security level above that of all other prisons in the United States, at least in the "ideological" ultramax part of it, which features permanent 24 hour solitary confinement with no human contact or opportunity to earn better conditions through good behavior; some accuse it of being deliberately designed and operated so as to effectively torture its inmates.

In a maximum security prison or area, all prisoners have individual cells with sliding doors controlled from a secure remote control station. Prisoners are allowed out of their cells one out of twenty four hours. When out of their cells, prisoners remain in the cell block or an exterior cage. Movement out of the cell block or "pod" is tightly restricted using restraints and escorts by correctional officers. Under close security, prisoners usually have one or two person cells operated from a remote control station. Each cell has its own toilet and sink. Inmates may leave their cells for work assignments or correctional programs and otherwise may be allowed in a common area in the cellblock or an exercise yard. The fences are generally double fences with watchtowers, housing armed guards, plus often a third, lethal-current electric fence in the middle.

Prisoners that fall into the medium security group may sleep in dormitories on bunk beds with lockers to store their possessions. They may have communal showers, toilets and sinks. Dormitories are locked at night with one or more correctional officers supervising. There is less supervision over the internal movements of prisoners. The perimeter is generally double fenced and regularly patrolled. Prisoners in minimum security facilities are considered to pose little physical risk to the public and are mainly non-violent "white collar criminals". Minimum security prisoners live in less-secure dormitories, which are regularly patrolled by correctional officers. As in medium security facilities, they have communal showers, toilets, and sinks. A minimum-security facility generally has a single fence that is watched, but not patrolled, by armed guards. At facilities in very remote and rural areas, there may be no fence at all. Prisoners may often work on community projects, such as roadside litter cleanup with the state department of transportation or wilderness conservation. Many minimum security facilities are small camps located in or near military bases, larger prisons (outside the security perimeter) or other government institutions to provide a convenient supply of convict labor to the institution. Many states allow persons in minimum-security facilities access to the internet.

## **5. Incarceration rate**

According to the U.S. Department of Justice, as of June 30, 2007, American prisons and jails held 2,299,116 inmates. In recent decades the U.S. has experienced a surge in its prison

population, quadrupling since 1980, partially as a result of mandated sentences that came about during the "war on drugs." Violent crime and property crime have declined since the early 1990s. As of 2004, the three states with the lowest ratio of imprisoned to civilian population are Maine (148 per 100,000), Minnesota (171 per 100,000), and Rhode Island (175 per 100,000). The three states with the highest ratio are Louisiana (816 per 100,000), Texas (694 per 100,000), and Mississippi (669 per 100,000).

Nearly one million of those incarcerated in state and federal prisons, as well as local jails, are serving time for committing non-violent crimes. In 2002, 93.2% of prisoners were male. About 10.4% of all black males in the United States between the ages of 25 and 29 were sentenced and in prison, compared to 2.4% of Hispanic males and 1.3% of white males. In 2005, about 1 out of every 136 U.S. residents was incarcerated either in prison or jail. The total amount being 2,320,359, with 1,446,269 in state and federal prisons and 747,529 in local jails. A 2005 report estimated that 27% of federal prison inmates are noncitizens, convicted of crimes while in the country legally or illegally. However, federal prison inmates are only a 6 percent of the total incarcerated population; noncitizen populations in state and local prisons are more difficult to establish. The United States has the highest documented per capita rate of incarceration of any country in the world.

## **6. Comparison of US Prison System with other countries**

The United States has the highest incarceration rate in the world at 737 persons imprisoned per 100,000 (as of 2005). A report released Feb. 28, 2008 indicates that in the United States more than 1 in 100 adults is now confined in an American jail or prison. The United States has 5% of the world's population and 25% of the world's incarcerated population. In 2006 the incarceration rate in England and Wales is 139 persons imprisoned per 100,000 residents, while in Norway it is 59 inmates per 100,000, whilst the Australian imprisonment rate is 163 prisoners per 100,000 residents, and the rate of imprisonment in New Zealand last year was 179 per 100,000.

In 2001 the incarceration rate in People's Republic of China was 111 per 100,000 in 2001 (sentenced prisoners only), although this figure is highly disputed. Chinese human rights activist Harry Wu, who spent 19 years in forced-labor camps for criticizing the government, estimates that 16 to 20 million of his countrymen are incarcerated, including common criminals, political prisoners, and people in involuntary job placements. Ten million prisoners would mean a rate of 793 per 100,000.

## **7. Prison conditions**

The non-governmental organization Human Rights Watch raised concerns with prisoner rape and medical care for inmates. In a survey of 1,788 male inmates in Midwestern prisons by Prison Journal, about 21% claimed they had been coerced or pressured into sexual activity during their incarceration, and 7% claimed that they had been raped in their current facility. In August 2003, a Harper's article by Wil S. Hylton estimated that "some where between 20 and 40 % of American prisoners are, at this very moment, infected with hepatitis C". Prisons may outsource medical care to private companies such as Correctional Medical Services, which, according to Hylton's research, try to minimize the amount of care given to prisoners in order to maximize profits. Also identified as an issue within the prison system is gang violence, because many gang members retain their gang identity and affiliations when imprisoned. Segregation of identified gang members from the general population of inmates, with different gangs being housed in separate units often results in the imprisonment of these gang members with their friends and criminal cohorts. Some feel this has the effect of turning prisons into "institutions of higher criminal learning."

Many prisons in the United States are overcrowded. For example, in California, 33 prisons have a capacity of 100,000, but they hold 170,000 inmates. Many prisons in California and around the country are forced to turn old gymnasiums and classrooms into huge bunkhouses for inmates. They do this by placing hundreds of bunk beds next to one another, in these gyms, without any type of barriers to keep inmates separated. In 2005, the Supreme Court of the United States case of Cutter v. Wilkinson established that prisons that received federal funds could not deny prisoners accommodations necessary for religious practices.

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