

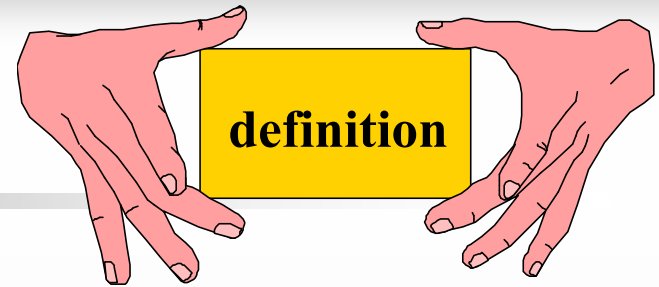


## **CHAPTER THREE**

# **The Punishment of Offenders- Penology**



sentencing



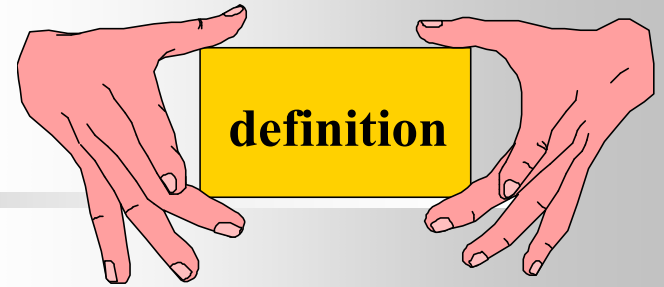
- ◆ **judicial imposition of a criminal sanction following adjudication of a crime**



## **factors influencing sentence**

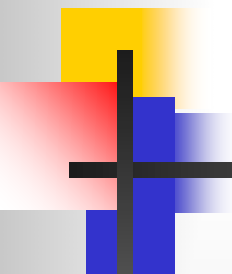
- ◆ **administrative context of the courts**
  - *caseload pressure*
- ◆ **presentence report**
  - *recom's of probation officer*
- ◆ **sentencing guidelines**
  - *or commissions, judicial rules*
- ◆ **attitudes & values of judges**
  - *Hagan, Sentencing as a Human Process*

# presentence report



a report prepared by a **probation officer**, who investigates an offender's background to **help** the **judge** select an appropriate sentence





# contemporary philosophies of punishment

- ◆ far from ideas of ancient/medieval times (eg, spiritual beliefs such as: afterlife & bones; demonology; sacred duty of the blood feud)
- ◆ Today: (combination of classical, neo-classical, positivist schools of thought)
- ◆ sentencing reflects views such as: nature of man, behavior, fairness, public safety:
  - *causes of behavior (why we act as we do)*
  - *mutability (can behavior change?)*
  - *justice, desert, & proportionality (what should offender “get?”)*
  - *what will make public safe?*

# purposes of punishment



◆ **Punishment**  
of the offender

- retribution

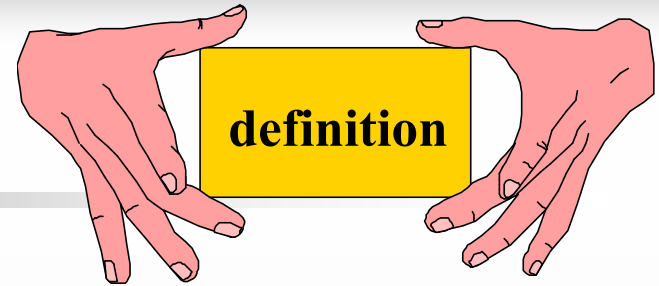
◆ **Protection**  
of the public

- deterrence
- rehabilitation
- incapacitation
- restoration

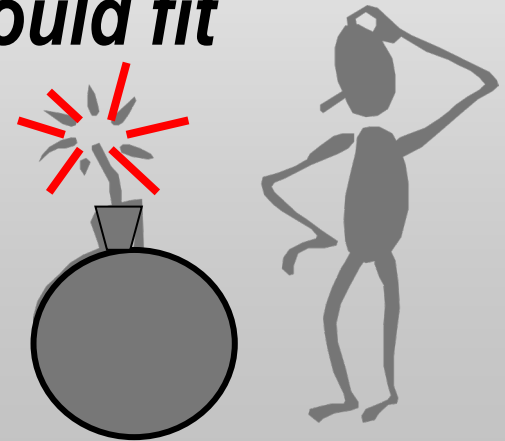


***note conflict:  
you can't do  
them all!***

# “retribution”



- ◆ offender must suffer for wrong-doing
- ◆ the aim of punishment is to respond in kind to one who has infringed on rights of others & so **deserves** to be penalized;
  - ◆ *severity of the sanction should fit seriousness of the crime.*
  - ◆ *“eye for an eye”*
  - ◆ *“teeth for teeth”*





◆ <https://www.youtube.com/watch?v=gNJ096J-ngo>

**Why Should We Punish? Theories of Punishment (3:26)**





## retribution: basis

- ◆ free will; man is a free moral agent
  - ◆ his “choice” calls for equal response
  - ◆ Kant’s moral imperative
  - ◆ eg.
    - *England’s “bloody code” 1850*
    - *1977 California “determinate sentencing law”*
- “purpose of sentencing is punishment”*



## retribution: analysis

### ◆ advantages

- *satisfies public sense of “justice,” “desert”*

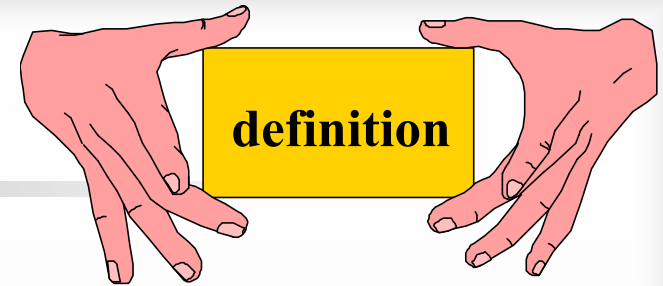
### ◆ disadvantages

- *severe, harsh, inhumane*
- *expensive: tough prisons are costly*
- *inhibits individual change, improvement*
- *may make offenders even more dangerous*

### ◆ features

- *harshness, severity, no programs*
- *only backward-looking (toward crime)*

# **“deterrence”**



- ◆ **purpose of punishment is to get people to conform their behavior to the dictates of law by assuring that non-conformity will cause them more pain than conformity will give them pleasure**





## deterrence: basis

- ◆ **assumes people are rational**
  - *people can assess costs, benefits of actions*
  - *they will weigh consequences of actions*
- ◆ **(Hedonic calculus determines behavior:)**
  - *people will choose conduct if pleasure outweighs pain*
  - *to get people to conform, make sure:  
(pain of punishment) > (pleasure from crime)!*
- ◆ **utility**
  - *purpose of punishment is to prevent crime:  
no more, no less*



◆ <https://www.youtube.com/watch?v=qN0V1KG9h4Q>

## The Deterrent Theory of Punishment (2:24)



# deterrence: analysis

## ♦ advantages

- *public safety: public feels better*
- *crime prevention: saves money; avoids criminals*

## ♦ disadvantages

- *crime not always rational*
  - ☐ emotional, impulsive, psychological, addiction
- *miscalculation of utility (by offender or sentencer)*
  - ☐ miscalculation of pleasure
    - ✓ *offender overestimates value of crime*
    - ✓ *sentencer underestimate value of crime; note: crime as a “high”*
  - ☐ miscalculate pain (or its probability)
    - ✓ *sentencer overestimates apprehension, conviction rates*
    - ✓ *note: pain ≠ “objective”; pain = f (perception)*
      - sentence (eg, prison) may not seen as tough by many
      - prison = normal for some! even reward!

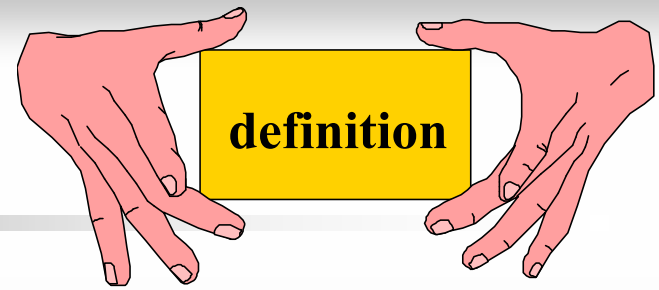
## ♦ features: no more/less pain than utility requires



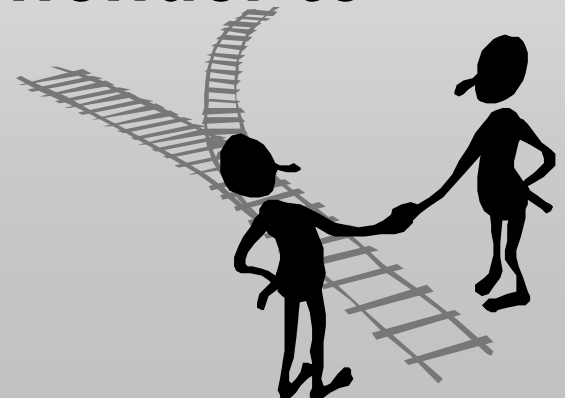
# deterrence: aims & effects

- ◆ **“general deterrence”**
  - ◆ *punishment of any offender is intended to be an example to the general public, to discourage them from committing an offense*
- ◆ **“special deterrence” (specific / individual)**
  - ◆ *punishment is intended to discourage a specific individual offender from committing crime again in the future*
- ◆ **“marginal deterrence” (effect in part, but not complete)**
  - *eg, w/ limit set at 65, speeder reduces illegal speed from 85 to 75*
  - *eg, armed vs. strong-arm robbery (weapon)*

# **“rehabilitation”**



- ◆ **purpose of punishment is to restore a convicted offender to a constructive place in society through some form of vocational or educational training or therapy that will provide skills and/or instill values that will allow offender to avoid crime**







## rehabilitation: basis

- ◆ behavior =  $f$  (social, psychological, economic, physical factors)
- ◆ if we can manipulate factors, we can change behavior
- ◆ objectives: “treat” offender to avoid:
  - desire to commit crime
  - need to resort to crime



◆ <https://www.youtube.com/watch?v=jGJ56lzX9wc>

**punish or rehabilitate  
(3:56)**



# rehabilitation: analysis

## ♦ advantages

- *public safety, societal improvement, humanitarian (individual salvation)*

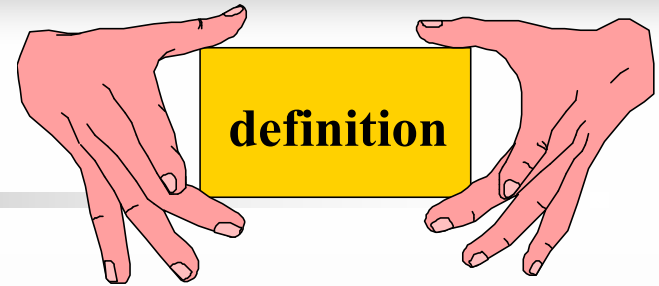
## ♦ disadvantages

- *difficult to accomplish; often fails*
  - ☐ requires knowledge, science
  - ☐ personnel, training, hard work
  - ☐ develop programs, facilities, \$\$
- *sentence disparity*
  - ☐ sentence according to needs, not crime

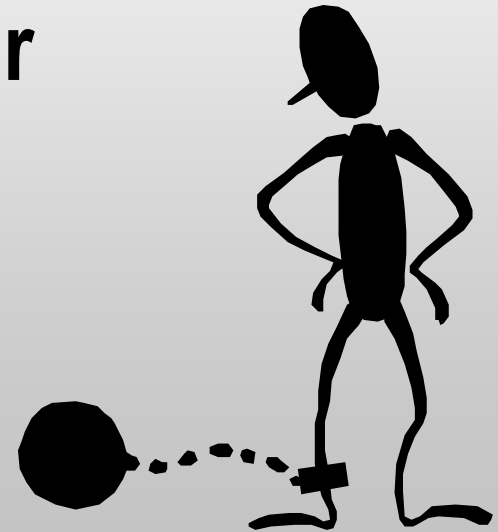
## ♦ features

- *indeterminate sentence, discretionary release, small prisons, treatment staff*

# “incapacitation”



- ♦ purpose of punishment is to deprive offender of ability to commit crimes against society, usually by detention of the offender in prison, or to otherwise render offender unable to do harm





## **incapacitation: basis**

- ◆ **less ambitious than social engineering**
- ◆ **objective simply □ public safety**
- ◆ **skeptical of our ability to diagnose needs, provide appropriate programs, or actually change people**
- ◆ **equally skeptical of people's willingness, desire to change**



# incapacitation: analysis

## ♦ advantages

- *public safety*
- *can be cheaper (when using technology)*
- *simple (not ambitious)*

## ♦ disadvantages

- *not a long-term solution to crime*
- *can be costly (if incarceration)*
- *privacy issues (if biology, technology)*
- *some forms too lenient; no “pain”*

## ♦ features

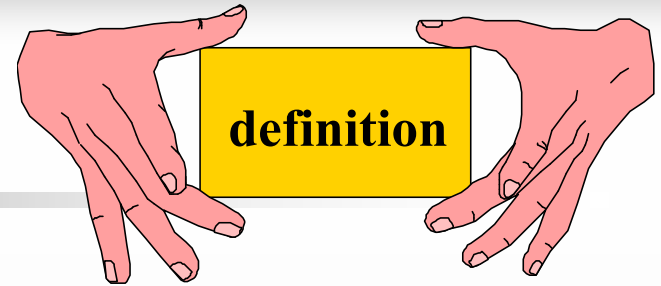
- *□ whatever makes offender incapable of committing crime*



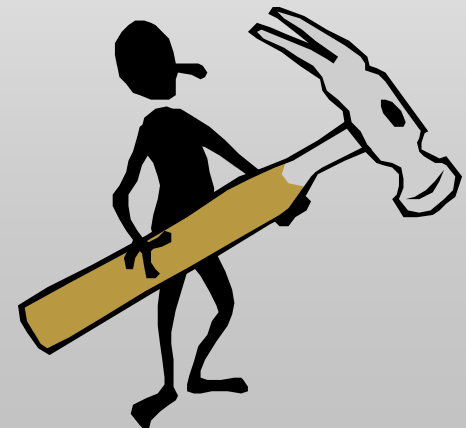
# 5 types of incapacitation

- ◆ **custodial**
  - *banishment/transportation*
  - *incarceration*
- ◆ **mechanical**
  - *electronic monitoring/ belt restraint*
  - *transmitter/receiver*
  - *physiological*
  - *castration, sterilization*
  - *“chemical” castration (depo-provera)*
- ◆ **psychological (*A Clockwork Orange*)**
- ◆ **surveillance**
  - *special intensive supervision*
  - *video home monitoring*
  - *community monitoring (not even sentence)*

# “restoration”



- ♦ aim of punishment is to repair the damage done to the victim & community by an offender's criminal act







## restoration: basis

- ◆ long-term solution to crime lies in making offender directly accountable to victim & community for consequences of his crime.
- ◆ “paying debt” should be more than just “doing time”
- ◆ offender should have to repair damage he has caused
- ◆ that is better for victim AND offender



## restoration: analysis

### ♦ advantages

- *public allowed to heal from offense*
- *creates stronger community*
- *offender held accountable to victim--  
rehabilitation*

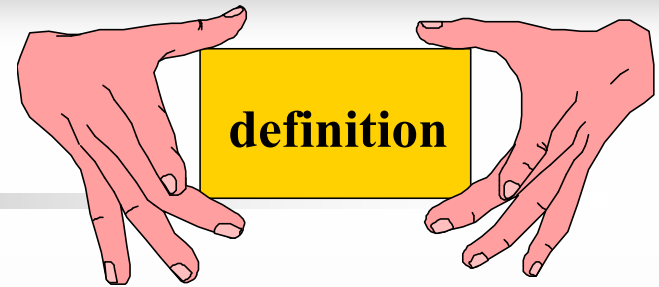
### ♦ disadvantages

- *not punitive enough for some public*
- *seen as “easy” by some offenders*
- *some victims don’t want contact*

### ♦ features

- *restitution, community service,  
interaction with victims*

# “community justice”



- ◆ a model of criminal justice administration that emphasizes restorative justice, including reparation to the victim & community; also approaches CJA from a problem-solving perspective, with citizen involvement in crime prevention



# sentencing themes

- ◆ **get tough!** (make offenders pay!)
- ◆ **reform offenders!** (still worthwhile)
- ◆ **save money!** (economy in sentencing)
- ◆ **sentence equity!** (structure discretion!)  
won support of both conservatives & liberals!

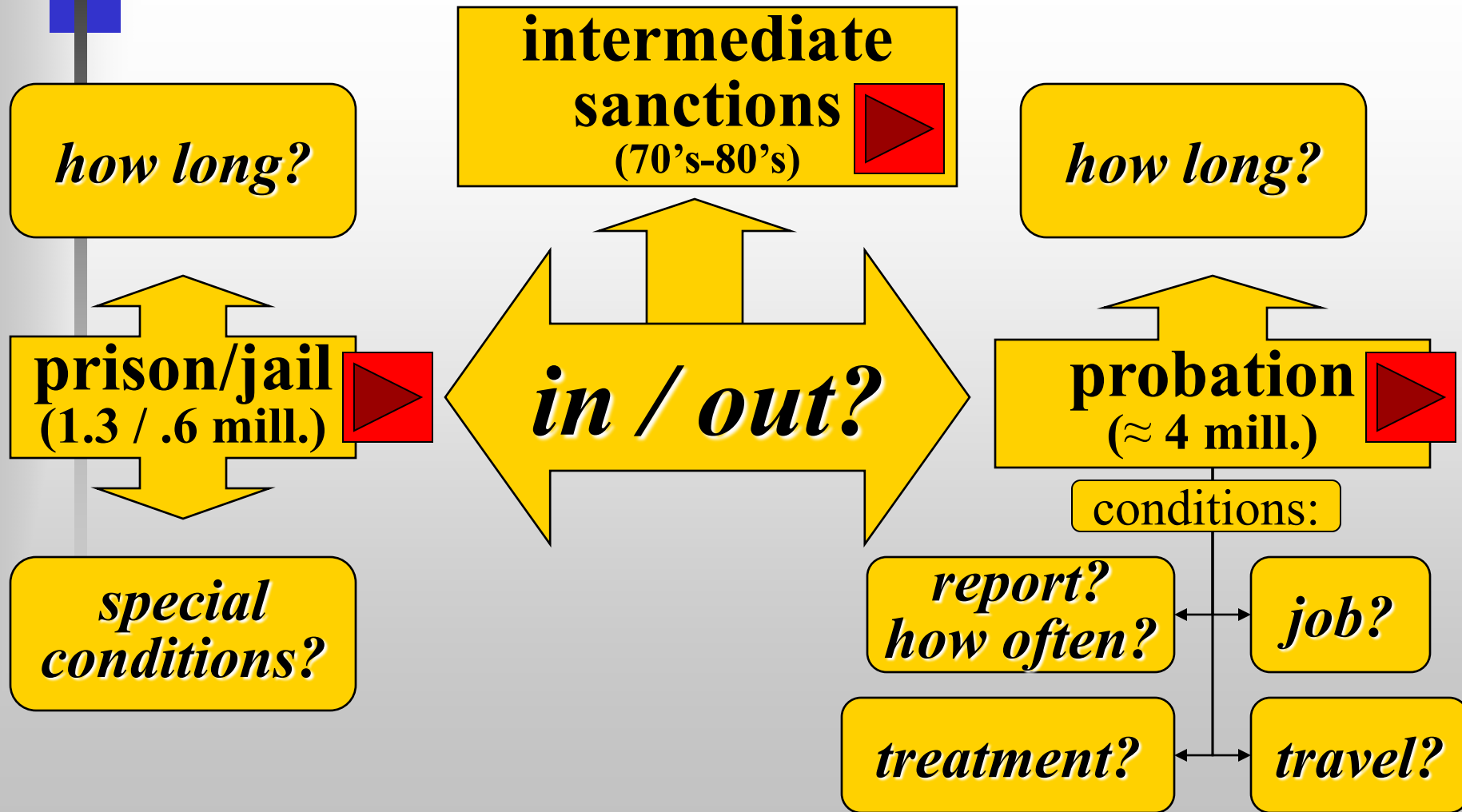
- ***conservatives:***

- ☐ eliminate judicial discretion: “take away ability of liberal, molly-coddling judges to let offenders off”

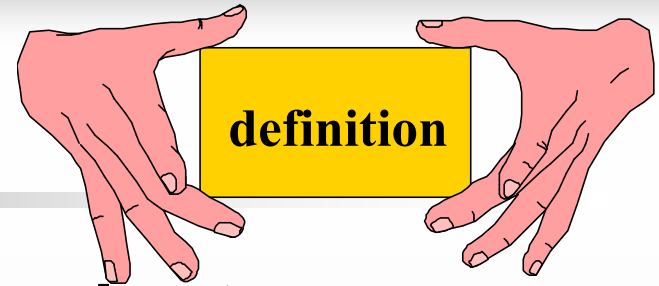
- ***liberals:***

- ☐ justice requires that we “treat similarly situated offenders similarly”

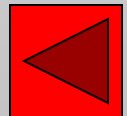
# current sentencing options, and their dimensions



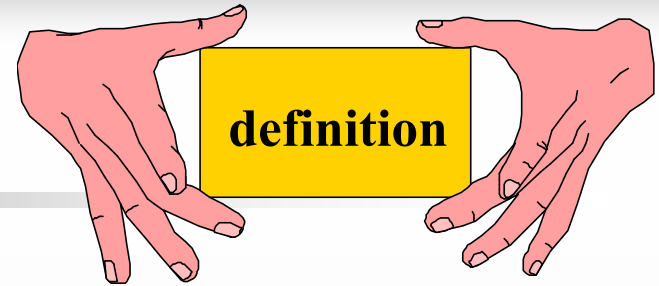
# **“probation”**



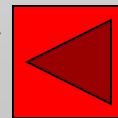
- ◆ **sentence allowing offender to serve sanction imposed by court while living & being supervised in community**
  - *John Augustus, 1841, Boston bootmaker*
  - *bailed out ≈ 2,000 men/women (\$1/4 mill.) (Boston Police Court--Judge Thatcher)*
  - *helped find homes, lodging, jobs*
  - *1<sup>st</sup> real alternative to incarceration more like “diversion” than probation*
- ◆ *note: nearly 60% of all adults under correctional superv. are on probation*



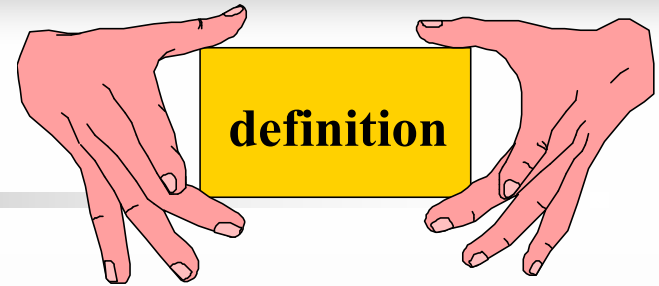
# “incarceration”



- ◆ a sentence requiring offenders to serve the sanctions imposed for the most serious offenses in a “total” facility designed to hold adult offenders for a minimum of one year
  - ◆ *note: less than 30% of all adults under correctional supervision are incarcerated in prisons & jails*



# “intermediate sanctions”

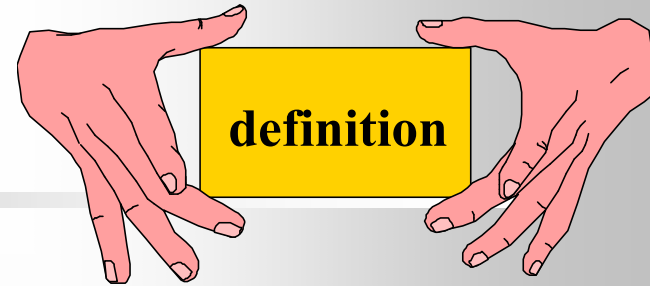


- ◆ a variety of punishments that are more restrictive than traditional probation, but less severe and less costly than incarceration





# sentence disparity

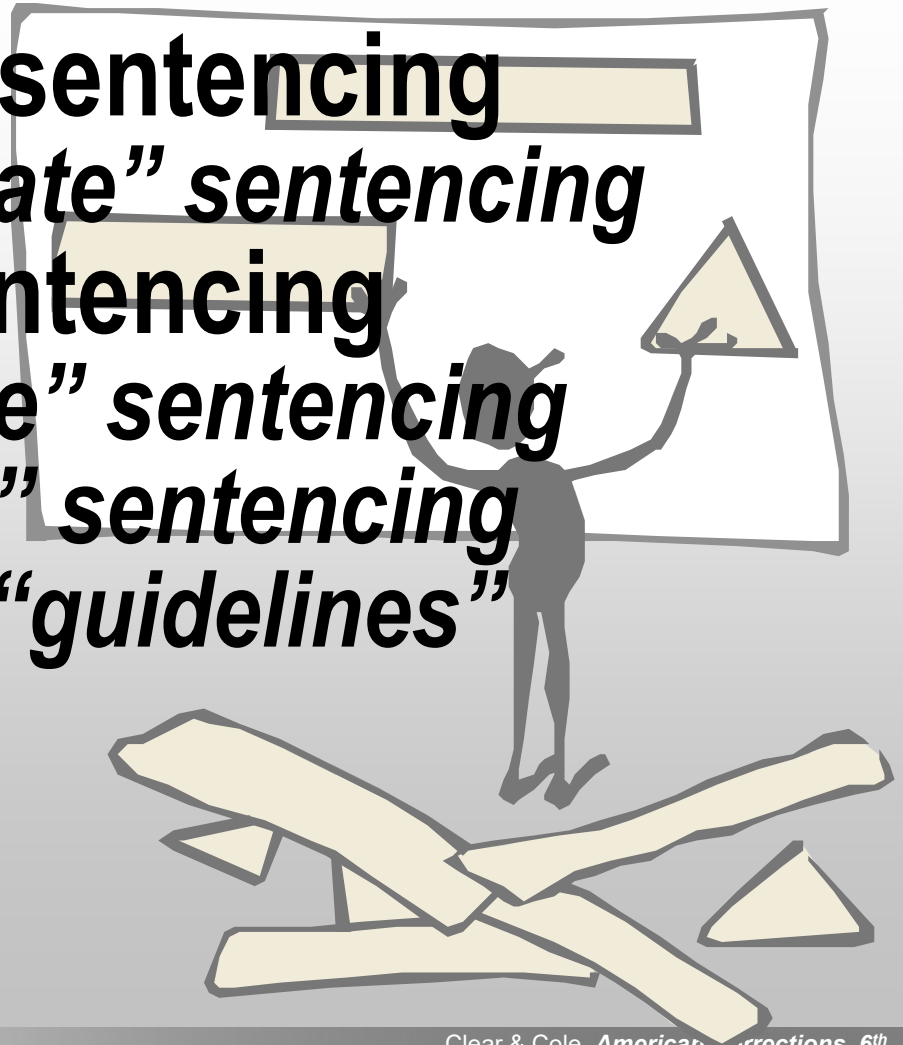


- ◆ a divergence in the types & lengths of sentences imposed for the same crime or for crimes of comparable seriousness by offenders with similar backgrounds when no reasonable justification for the divergence can be discerned

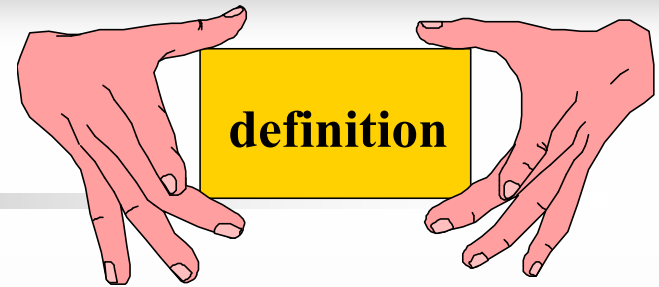


# structuring sentences: 4 basic schemes

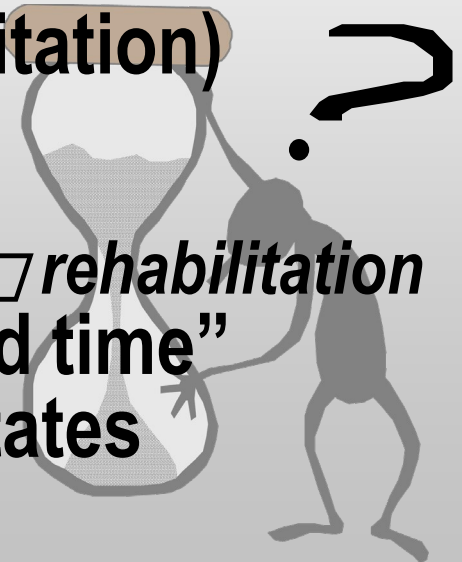
- ◆ unstructured sentencing
  1. *“indeterminate” sentencing*
- ◆ structured sentencing
  2. *“determinate” sentencing*
  3. *“mandatory” sentencing*
  4. *sentencing “guidelines”*



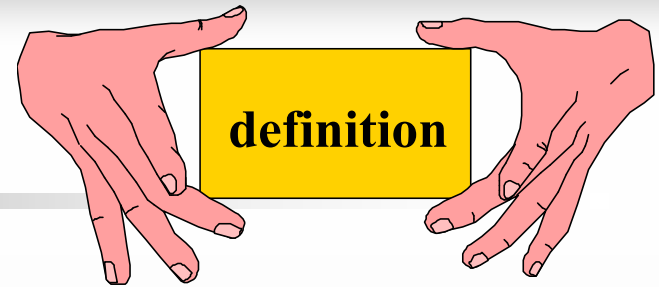
# 1. indeterminate sentencing



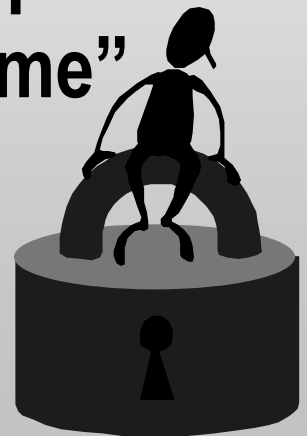
- ◆ period of incarceration, with minimum & maximum terms determined by judicial or legislative authority at time of sentencing
- ◆ release usually decided by parole board, as (offender's behavior)
- ◆ goal: to reform offender (rehabilitation)
  - *NY, 1876 (Elmira Reformatory)*
  - *faith in science, human change*
  - *relationship of indeterminate s'g □ rehabilitation*
- ◆ term is usually reduced by “good time”
- ◆ used as primary scheme in 36 states



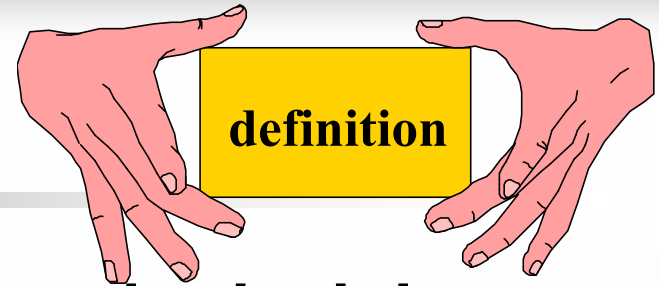
## 2. determinate sentencing



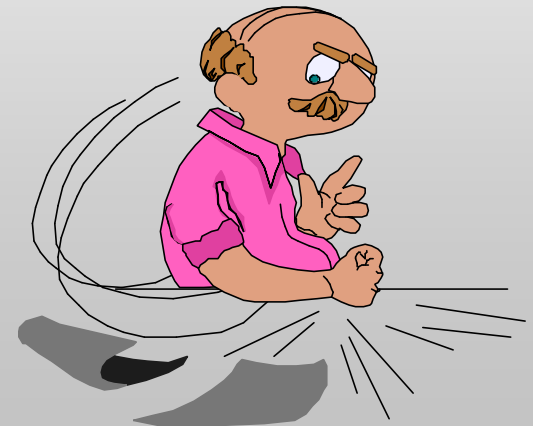
- ◆ disillusionment with rehabilitative ideal
- ◆ sentence of incarceration involves a fixed term of years, determined in advance & imposed at time of sentencing
- ◆ release is automatic, upon expiration of fixed term
- ◆ associated with concept of retribution
- ◆ period is usually reduced by “good time”
- ◆ used as primary scheme in 14 states



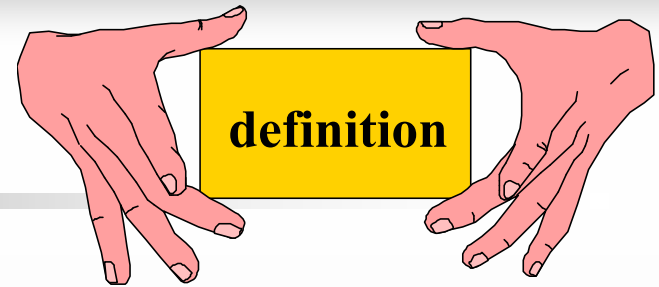
### 3. mandatory sentencing



- ◆ a sentence specifying a required minimum term of incarceration for **certain offenders** and/or **circumstances** (also called *enhancement*)
- ◆ used in some form in all 50 states
- ◆ ... for specific crimes:
  - *drug possession, trafficking*
  - *DUI*
  - *sex offenses*
- ◆ ... for specific circumstances:
  - *prior criminal history*
  - *use of firearm*
  - *serious bodily injury*
  - *substantial property damage*



## 4. sentencing guidelines



- ◆ **scheme of benchmark sentences designed to assist judges in selecting sentence**
- ◆ **guidelines are based on either:**
  - ◆ *past sentencing practices of judges, or*
  - ◆ *sentence recommendations by legislature or commission for specific types of cases*
- ◆ **judge must give reason for deviation**
- ◆ **deviations usually subject to review by court or commission**
- ◆ **17 states have adopted scheme**
- ◆ **no new states since '94**



## criteria built into guidelines

- ◆ sentence is based on 2 dimensions
  - offender score
    - ☐ criminal history
    - ☐ background factors--education, stability
  - offense severity score
    - ☐ severity of crime
    - ☐ degree of harm/risk to victims
    - ☐ degree of damage to property
    - ☐ use of weapon
- ◆ recommended sentences are expressed on a grid

# how guidelines work

## (Minnesota Guidelines Grid)

*minor* <-----> *serious*

### CRIMINAL HISTORY SCORE

*serious* <-----> *minor*  
OFFENSE SEVERITY

	0-1	2	3	4	5
0-1					
2					
3					
4					
5					



# how guidelines work

## (Minnesota Guidelines Grid)

*minor* <-----> *serious*

### CRIMINAL HISTORY SCORE

	0	1	2	3	4	5	6 +
drug sale	12	12	12	13	15	17	19 (18 -20)
chk forgery	12	12	13	15	17	19	21 (20 - 22)
theft-mi nor	12	13	15	17	19 (18 -20)	22 (21 ?2 3)	25 (24 ?2 6)
*****	*****	*****	*****	*****	*****	*****	*****
1° assault	86 (81-91)	98 (93-103)	110 (105-115)	122 (117-127)	134 (129-139)	146 (141-151)	158 (153-163)
3° murder	150 (144-156)	165 (159-171)	180 (174-186)	195 (189-201)	210 (204-216)	225 (219-231)	240 (234-246)
2° murder	306 (229-313)	326 (319-333)	346 (339-353)	366 (359-373)	386 (379-393)	406 (399-413)	426 (419-433)

**note:** for yellow squares: judge may opt for non-jail sentence;  
for others, presumptive commitment is to state prison.

serious <-----> minor  
OFFENSE SEVERITY



**Now, you try it!**

- ◆ **determine guideline sentence for the following offender ...**
  - **offense = assault in the first degree**
  - **criminal history score = 3**
- ◆ **note: a range of months shown in parentheses means you (the judge) can select a term anywhere within the range.**



***What is the guideline?  
Does it make sense to you?***

# the solution

## (Minnesota Guidelines Grid)

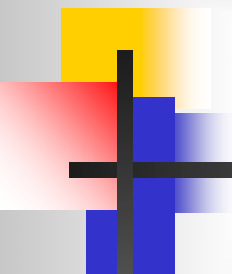
*minor* <-----> *serious*

### CRIMINAL HISTORY SCORE

	0	1	2	3	4	5	6 +
drug sale	12	12	12	13	15	17	19 (18 -20)
chk forgery	12	12	13	15	17	19	21 (20 - 22)
theft-mi nor	12	13	15	17	19 (18 -20)	22 (21 ?2 3)	25 (24 ?2 6)
*****	*****	*****	*****	*****	*****	*****	*****
1° assault	86 (81-91)	98 (93-103)	110 (105-115)	122 (117-127)	134 (129-139)	146 (141-151)	158 (153-163)
3° murder	150 (144-156)	165 (159-171)	180 (174-186)	195 (189-201)	210 (204-216)	225 (219-231)	240 (234-246)
2° murder	306 (229-313)	326 (319-333)	346 (339-353)	366 (359-373)	386 (379-393)	406 (399-413)	426 (419-433)

**note:** for yellow squares: judge may opt for non-jail sentence;  
for others, presumptive commitment is to state prison.

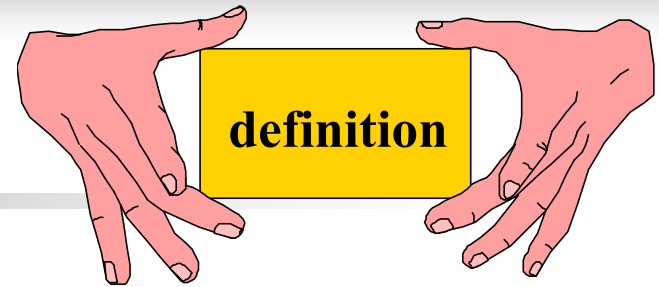
*minor* <-----> *serious*  
OFFENSE SEVERITY



other “get-tough” reforms besides  
determinate & mandatory sentencing

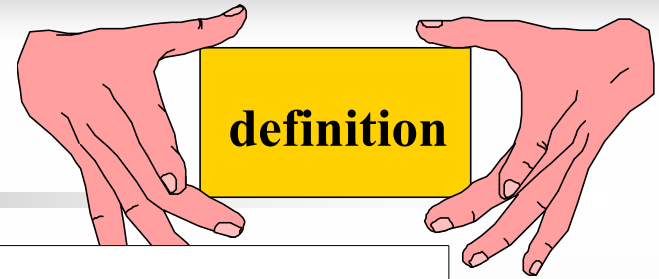
- ◆ **truth-in-sentencing laws**
- ◆ **three strikes laws**
- ◆ **chain gangs**

# **“truth-in-sentencing”**



- ◆ **special laws requiring completion of nearly all of maximum sentence (eg, 85%)**
  - ◆ ***40 states; provisions vary***
    - **Arizona:**
      - ✓ ***homicide, rape, sex off's --> all of sentence***
      - ✓ ***all other offenses --> 85%***
  - ◆ ***1994: federal gov. allocated most of \$10 bill. in prison construction funds to states adopting such laws***
  - ◆ ***laws expected to increase prison populations, correctional construction & operations costs***
  - ◆ ***by 2001, several states began to repeal these laws, due to prison growth & cost***

# "three strikes & you're out"



ling

%

)

s or  
nors  
tates

indeterminate term, eg, 25 to life; LWOP (life without parole)



## chain gangs

- ◆ **Alabama, Arizona, Florida, Iowa, Maine**
- ◆ **backfired: not used as intended/imagined**
  - *authorities won't risk using serious offenders; so only minor offenders allowed*
  - *can't "work" effectively with chains*
    - so, either little work done, or don't use chains
  - *cost of supervision in field is much higher than in-custody costs*
  - *so, used less than intended*



## punctuating the sentence: how it ends...

- ◆ **discretionary release by admin. body**
  - *eg, parole board*
  - *includes some states with such provisions under old sentencing laws (eg, Ca.)*
- ◆ **automatic release**
  1. *mandatory release*
    - ☐ must be released; max term less good time
  2. *expiration of term*
    - ☐ “max” out; served all of time owed



# reductions in sentence: getting out of “jail” free?

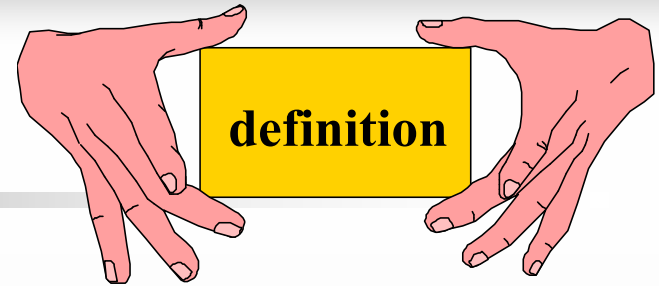
## ◆ good time

- *units of time subtracted from a sentence, for good conduct* ►

## ◆ clemency


- *executive or legislative forgiveness for crime, usually accompanied by some reduction of sentence*
- *pardon*
  - executive act excusing one from a crime & the civil consequences of crime
- *commutation*
  - executive act shortening one's sentence for a crime ►

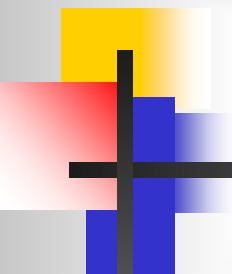
## **“good time”**



- ◆ **amount of time by which an inmate's sentence may be reduced, at the discretion of prison administrators, as a reward for good behavior or participation in vocational, educational, and/or treatment programs**
  - ◆ *most prisoners serve no more than 1/3 of the average sentence imposed for their offense category*

## **“good time”: not for everyone**

- ◆ **statutory (“compensatory”)**
  - *awarded automatically*
  - *must have no disciplinary “write-ups”*
  - *awarded at a rate of 1/5 to 1/2 off term*
- ◆ **meritorious**
  - *earned for behavior, program participation*
  - *eg, Ca. “work incentive law” (day for day)*
- ◆ **heroic (eg, save guard/inmate; 1 yr.)**
- ◆ **not available in Utah, Montana, Hawaii**
- ◆ **varies (Va, sentence reduced 50%; Miss., 15%)** 



## **“straight time”: post-release supervision**

- ◆ **exists in some form in all 50 states**
- ◆ **usually called “parole”**
- ◆ **other forms:**
  - ***court may impose term of ‘probation’ after prison term***
  - ***release is followed by period of “community custody & supervision”***
  - ***release from prison is “conditional”; offender is subject to specified conditions***



**Thank you for your time and patience**