



Presentence Evaluations

DON'T PANIC



Presentence Evaluations

- Legal theory
- Historical criminal punishments
- Practical aspects



Criminal Punishment

Legal Theory

Purposes of a Criminal Sentence



- For society
 - Retribution
 - Deterrence
 -
- For the individual:
 - Incapacitation
 - Rehabilitation

Sentencing Theory

Punishment is proportional to culpable mental state:

- Purposeful
- Knowing
- Reckless
- Negligent



Strict Liability Offenses

Guilt is unrelated to mens rea

- Speeding
- Parking violations
- Tax evasion
- Littering
- DUI



Sentencing Theory



Determinate sentencing

- “Let the punishment fit the crime”

Indeterminate sentencing

- “Let the punishment fit the criminal”

Rule 4-341. Sentencing - Presentence investigation and report

Before imposing a sentence, if required by law the court shall, and in other cases may, order a presentence investigation and report.

A copy of the report, including any recommendation to the court, shall be mailed or otherwise delivered to the defendant or counsel and to the State's Attorney in sufficient time before sentencing to afford a reasonable opportunity for the parties to investigate the information in the report. Except for any portion of a presentence report that is admitted into evidence, the presentence report, including any recommendation to the court, is not a public record and shall be kept confidential as provided in Code, Correctional Services Article, § 6-112.



Investigation Mandated



- 1st degree murder, seeking life without parole
- Death penalty

Maryland Rules § 4-342

Procedure at Sentencing

- Notice to victim/victim impact statement
- Defendant allocution
- Mitigating evidence
- Sentence imposed



Procedure at Sentencing

- Reasons given on record
- Credit for time served
- Notice of right to modification or reduction



Punishments Defined

◆ Maryland Code of Criminal Procedure

Title 6. Trial and Sentencing

- Sentencing guidelines and procedures

(<https://mags.msccsp.org/mags/s/caseMain.action?mode=guideline>)

◆ 1984 Federal Sentencing Reform Act

Federal Sentencing Guideline Manual

(<https://www.ussc.gov/guidelines>)



Review of Sentence

- Also called “reconsideration”
- Three judge panel, not original judge
- May decrease, leave unchanged, or increase sentence
- Must be filed within 30 days

Maryland Rules §4-342

Maryland Criminal Procedure §6-216 et. seq.



Sentence Modification



- Must be filed within 90 days
- Original judge
- Cannot increase sentence
- Option for modification expires after five years

Alternative Sentences

- Probation before judgment
- Probation
- Suspended sentence
- Split sentence



Alternative Sentences

- Community service
- Fines and/or restitution
- Home detention
- Health-General §8-505 commitment



History of Criminal Punishment



Colonial America & British common law

- Capital punishment
- Corporal punishment

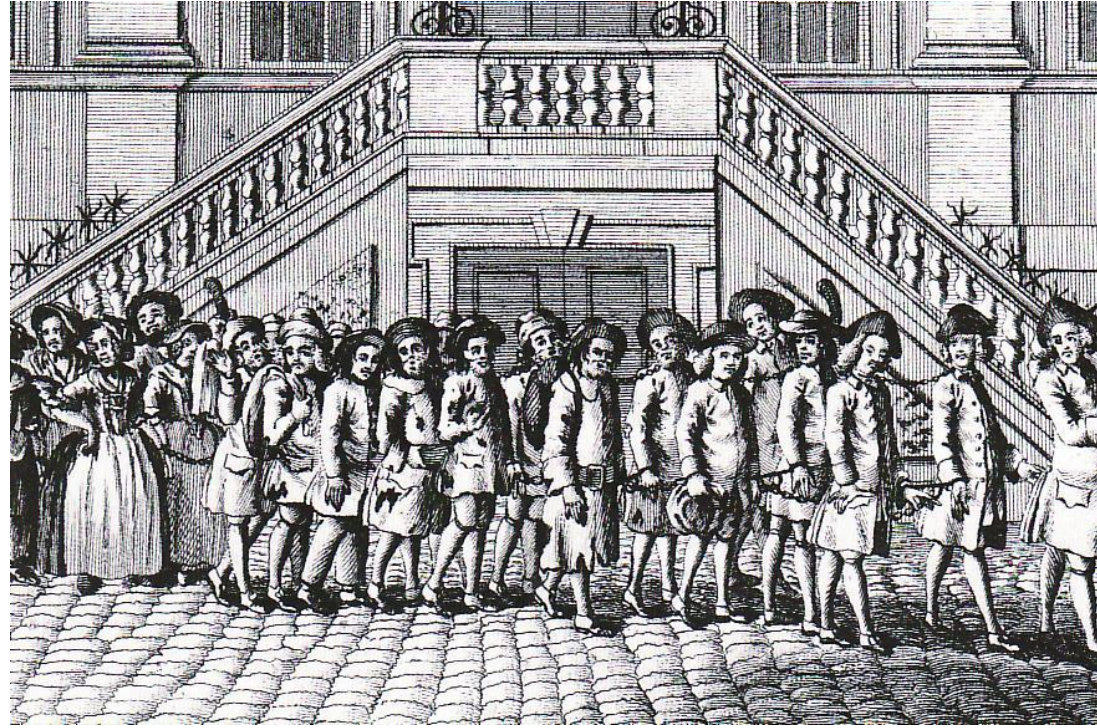
History of Criminal Punishment



History of Criminal Punishment



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History of Criminal Punishment

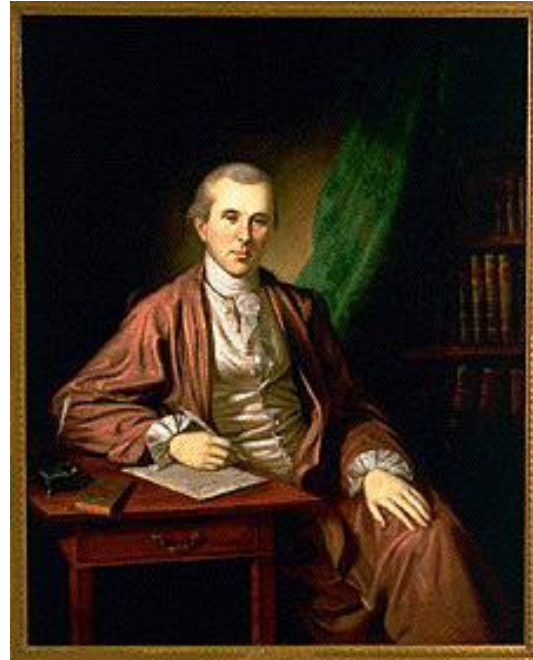


The King's Passengers to Maryland and Virginia



Peter Wilson Coldham

History of Criminal Punishment



History of Criminal Punishment

Post-civil war and Reformatory Era

- Crime as disease: moral insanity
- Adoption of parole by American Prison Congress (1870)
- Reformatories established
- Indeterminate sentencing
- Prison hospitals (Uttica Insane Asylum, Auburn Insane Asylum)



History of Criminal Punishment

Early to Mid-Twentieth Century

- By 1922 37 states have indeterminate sentencing
- American Bar Association calls for psychiatric studies of offenders
- First court clinics established



History of Criminal Punishment

Early to Mid-Twentieth Century

- Creation of reception centers, therapeutic prisons (Patuxent Institution)
- Indeterminate sentencing used as indefinite commitment



History of Criminal Punishment

Late Twentieth Century

- 1984 attempted assassination of Ronald Reagan
- Insanity Defense Reform Act
- Adoption of state sentencing guidelines
- Abolition of parole
- “Life means life”





Criminal Punishment

Practical Aspects

Referral Sources

- Judges
- State's attorneys
- Public defenders
- Parole and probation officers



Reasons for Presentence Referral

- Unusual or bizarre offense
- Sex offense
- History of mental health care
- Prediction of dangerousness



Reasons for Presentence Referral

- Rehabilitation potential
- Treatment recommendations
- “There’s something wrong with this guy.”



Presentence “Do’s”

- Do what you are good at
- Give non-confidentiality warning
- Clarify purpose of referral
- Make a diagnosis, if present



Presentence “Do’s”

- Educate the court re: the diagnosis
- Utilize other professionals
- Be practical and specific
- Admit your limitations



Presentence “Don’t s”

- Be influenced by personal reactions and experience
- Use medical jargon
- Make impossible suggestions



Presentence “Don’t s”

- Include irrelevant prejudicial information
- Recommend a disposition if none is requested



Criminal Sentences: Glossary

- Probation
- Parole
- Suspended sentence
- Split sentence
- Stay of sentence



Criminal Sentences: Glossary

- Good conduct credits
- Diminution credits
- Mandatory release date
- Maximum expiration date





Questions?