

CHAPTER THREE: PUNISHMENT AND SENTENCING

INTRODUCTION

New York has three basic punishment objectives: to deter, to incapacitate, and to rehabilitate, which are defined in the textbook. When considering what punishments and sentences to impose, the Legislature must deal with broad principles since myriad factors pertain to individual offenses and offenders. The courts must also then consider the proper sentence after hearing the evidence in relation to the circumstances surrounding an offense. For these reasons, New York has historically imposed an indeterminate sentencing scheme whereby the Legislature established a range of punishments and sentences based on the severity of the crime. With this range, the courts could then impose more specific punishments based on factors such as motivation for the offense, mental illness issues, extent of damage, quantity of the controlled substance involved, injury to the victim or victims, and so forth.

Types of punishments available in New York are incarceration in jail or prison, fines, restitution, conditional discharge, probation, and lethal injection. These sentences may be either singularly imposed (e.g., lethal injection) or imposed in combination (e.g., prison and conditional release). New York also imposes mandatory surcharges on offenders. Surcharges are fees used for costs associated with criminal justice programs, such as sex offender registration, maintenance of the DNA databank, sex offender victim fees, and crime victim assistance fees. The fees attached are dependant for the type of offense upon which the offender was convicted. The schedule of fees is imposed by §60.35(1) of the Penal Law.

This chapter will focus on the additions and changes to the New York sentencing scheme as defined by the Sentencing Reform Act of 1995. This discussion includes sentencing ranges, types of offenders, and punishments other than imprisonment. The chapter will conclude with a discussion about the death penalty in New York.

RESOURCES

The following articles are pertinent for the discussion in this chapter. First, Article 70, Sentences of imprisonment, provides the sentencing rules in the Penal Law. The full-text statute can be found at the following link: <http://ypdcrime.com/penal.law/article70.htm>

Article 60, Authorized disposition of offenders, contains the full-text section of 60.35. Article 60 is found at <http://ypdcrime.com/penal.law/article60.htm>

Article 80, Fines, indicates imposition of fines that the court is authorized to impose on convicted offenders. Article 80 is found at <http://ypdcrime.com/penal.law/article80.htm>

Article 85, Sentence of intermittent imprisonment, provides the terms under which this sentence can be imposed. The article is found at <http://ypdcrime.com/penal.law/article85.htm>

The following link provides felony arrest, conviction, and incarceration data between 1998 and 2005 and is maintained by the New York Division of Criminal Justice Services: <http://criminaljustice.state.ny.us/crimnet/ojsa/dispos/nys.htm>

The next link is to a national report of the death penalty in the United States. Pages 346 to 393 provide a list of people executed in New York between 1608 and 1987. The list includes the name (if known), race, age, date executed, method of execution, and crime for which executed. This report is found at: <http://www.deathpenaltyinfo.org/ESPYstate.pdf>

People v. Lavelle is a landmark case in which the Court of Appeals declared the death penalty in New York unconstitutional. This case will be discussed later in this chapter, and it can be read in its entirety at: <http://www.nycourts.gov/ctapps/decisions/jun04/71opn04.pdf>

THE SENTENCING REFORM ACT OF 1995

New York does not follow sentencing guidelines as do several other states and the federal government. In New York, the sentencing scheme was revised in 1995 pursuant to the Sentencing Reform Act. The Sentencing Reform Act of 1995 created comprehensive changes to the Penal Law, as well as the Correction Law and Criminal Procedure Law. In its determination of the length of sentence for felony offenders, the focus of the sentencing scheme, the Legislature considered the seriousness of the crime against the nature of the offender. Such a determination is made with recognition of the great difficulty in determining whether the offender is likely to continue the criminal behavior (i.e., recidivate). This considerations is made with the added concerns of the impact that imprisonment will have on the offender and the offender's family, the impact of the failure to imprison on the community or when imprisoned, the return to the community, and the cost of imprisonment for an individual.

Further, the Act creates:

- punishment ranges with minimum and maximum limits,
- determinate sentences,
- distinctions among first time felony offenders/second felony offenders, violent felony offenders/second violent felony offenders, juvenile offenders, second child assault felony offenders, persistent felony offenders, misdemeanants and violators

The first consideration for determining the length of sentence is the grade of the offense. New York recognizes a Class A felony, the most serious, as murder, and kidnapping, both in the first and second degree, and arson in the first degree.

Class B felonies include the following, all in the first degree:

- assault
- burglary
- manslaughter
- rape
- sodomy
- arson
- robbery
- criminally selling narcotics

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Class C felonies include:

- burglary in the 2nd degree
- grand larceny in the 2nd degree
- forgery in the 1st degree
- criminal possession of a forged instrument in the 1st degree
- promoting prostitution in the 1st degree
- manslaughter in the 2nd degree
- arson in the 2nd degree
- robbery in the 2nd degree
- criminally possessing narcotics in the 1st and 2nd degrees

Class D felonies include:

- attempt to commit assault in the 1st degree
- assault in the 2nd degree

Types of Sentences

New York State has five types of sentences of imprisonment for felony offenders. Four of the major types are indeterminate sentences, determinate sentences, alternative definite sentences, and life imprisonment without parole. The fifth, intermittent sentences, are rarely used in New York.

Indeterminate Sentence

An indeterminate sentencing scheme allows judges in individual cases to consider the varied circumstances surrounding the level of harm caused by the offense as well as the offender's history, character, and physical and mental condition. The judge could then tailor the sentence accordingly. On the other hand, a general scheme provides the boundaries by which a judge must adhere, which ultimately diminishes disparities of sentences across offenders committing the same levels of offenses.

Section 70.00(1) describes the basic sentence for a felony. According to this section:

[A] sentence of imprisonment for a felony...shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

With the exception of the mandatory life term of a class A felony, the maximum terms of imprisonment for other felonies are imposed by the court. According to **Section 70.00(2)**, the range of the maximum term of an indeterminate sentence shall be between three years and the following:

- (a) Class A felony—life imprisonment
- (b) Class B felony—not to exceed 25 years

- (c) Class C felony—not to exceed 15 years
- (d) Class D felony—not to exceed 7 years
- (e) Class E felony—not to exceed 4 years

The minimum indeterminate term is imposed by §70.00(3). According to **Section 70.00(3)**, the minimum period of imprisonment under an indeterminate sentence shall be at least one year and shall be fixed as follows:

- (a) Class A felony—fixed by the court
 - (i) Class A-I felony—the minimum is not less than 15 years and not more than 25 years. However, for a person convicted of murder who receives a sentence other than death or life imprisonment without parole, the minimum range is between 20 and 25 years. Where the offender is convicted of murder in the second degree or aggravated murder, the sentence is life imprisonment without parole. Where the offender is convicted of attempted murder in the first degree or attempted aggravated murder, the minimum sentence is between 20 and 40 years.
 - (ii) Class A-II felony—the minimum is not less than 3 years and not more than 8 years, 4 months (1/3 of maximum sentence)
- (b) Class B felony—the minimum is not less than 1 year and not more than 1/3 of the maximum sentence imposed

Section 70.00(4) provides an alternative definite sentence provision for class D and E felonies:

When a person, other than a second or persistent felony offender, is sentenced for a class D or class E felony, and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate or determinate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

Section 70.00(5) contains the life imprisonment without parole sentencing provision:

Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release...[S]uch sentence shall be deemed to be an indeterminate sentence. A defendant *may* be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree...A defendant *must* be sentenced to life imprisonment without parole upon conviction for the crime of terrorism...the crime of criminal possession of a chemical weapon or biological weapon in the first degree...or the crime of criminal use of a chemical weapon or biological weapon in the first degree...A defendant *must* be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree or for the crime of aggravated murder.

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Determinate Sentence

The major change to the Penal Law is that determinate sentences were added. Specifically, in cases of individuals convicted as violent felony offenders or second felony offenders, the court must impose a determinate sentence of imprisonment pursuant to §§70.02 and 70.04 respectively.

Determinate sentencing is a fixed sentencing scheme which could be reduced by good-time credits. Since 1995, determinate sentencing, has been extended to almost all violent felony offenders. It was also extended to felony drug offenders. In New York, a determinate sentence consists of a minimum of one year imprisonment and a specified length of imprisonment without a minimum or maximum. A period of supervision is also imposed beyond release from prison. Offenders sentenced as violent felony offenders, second violent felony offenders, or felony drug offenders must be sentenced to determinate terms. Determinate terms may range from a low of 1 to 1 ½ years to a high of 15 to 30 years.

The basic determinate sentence is outlined in **70.00(6)**. According to this section:

[W]hen a person is sentenced as a violent felony offender...or as a second violent felony offender...or as a second felony offender on a conviction for a violent felony offense...the court must impose a determinate sentence of imprisonment in accordance with the provisions of such sections and such sentence shall include...a period of post-release supervision.

Definite Sentence

Definite sentences are those of one year or less and are available only for the lower classes of offenses (C, D or E felonies). A definite sentence is usually viewed as an alternative sentence that can be imposed in place of an indeterminate sentence where the court articulates special factors in authorizing its use.

Intermittent Sentence

Section 85.00(1) defines the intermittent sentence as:

[A] revocable sentence of imprisonment to be served on days or during certain periods of days, or both, specified by the court as part of the sentence. A person who receives a sentence of intermittent imprisonment shall be incarcerated in the institution to which he is committed at such times as are specified by the court in the sentence.

Subsection (2) indicates when this sentence may be imposed. This sentence is reserved for when each of the following conditions are met:

- (a) the court is imposing sentence, upon a person other than a second or persistent felony offender, for a class D or class E felony or for any offense that is not a felony; and
- (b) the court is not imposing any other sentence of imprisonment upon the defendant at the same time; and
- (c) the defendant is not under any other sentence of imprisonment with a term in excess of fifteen days imposed by any other court.

Types of Offenders

Violent Felony Offenders

Violent felony offenders have committed the violent offenses enumerated in Section 70.02. Section 70.02 also indicates the corresponding sentence for each class of offenses. According to **Section 70.02(1)**, a violent felony offense is a class B, C, D, or E violent felony offense enumerated as: Class B violent felonies in 70.02(1)(a), class C in (1)(b), class D in (1)(c), and class E in (1)(d).

According to 70.02(3), violent felony offenses are fixed to determinate terms before eligibility for parole. The general sentences are as follows:

- (a) Class B felony—the term is at least 5 years and not to exceed 25 years
- (b) Class C felony—the term is at least 3 ½ years and not to exceed 15 years
- (c) Class D felony—the term is at least 2 years and not to exceed 7 years
- (d) Class E felony—the term is at least 1 ½ years and not to exceed 4 years

Within each class subdivision, determinate terms are indicated for specific offenses.

Second Violent Felony Offender

Section 70.04 describes second violent felony offenders and their sentences. A second violent felony offender is defined in **Section 70.04(1)(a)** as a person who stands convicted of a violent felony offense...after having previously been subjected to a predicate violent felony conviction. A prior conviction is a felony conviction, according to §70.02(2)(i) when the conviction was a class A felony or a violent felony.

A second violent felony offense is currently subjected to a determinate term. According to Section 70.04(3), the term of a determinate sentence is fixed as follows:

- (a) Class B felony—a term of at least 10 years not to exceed 25 years
- (b) Class C felony—a term of at least 7 years and not to exceed 15 years
- (c) Class D felony—a term of at least 5 years and not to exceed 7 years
- (d) Class E felony—at term of at least 4 years.

Second Felony Offender

Section 70.06(1)(a) defines a second felony offender as a person...who stands convicted of a felony...other than a class A-I felony, after having previously been subjected to one or more predicate felony convictions.

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Second felony offenses are subjected to indeterminate terms. **Section 70.06(3)** provides the maximum term of an indeterminate sentence which must be fixed by the court as follows:

- (a) Class A-II felony—the term must be life imprisonment
- (b) Class B felony—the term must be at least 9 years and not to exceed 25 years
- (c) Class C felony—the term must be at least 6 years and not to exceed 15 years
- (d) Class D felony—the term must be at least 4 years and not to exceed 7 years
- (e) Class E felony—the term must be at least 3 years and not to exceed 4 years

Section 70.06(4), (a) provides that for a class A-II felony, the minimum term must be fixed by the court at no less than 6 years to 12 ½ years. For other felonies, (b), the minimum term is ½ of the maximum term imposed.

Section 70.06(5) states that a second felony offender may receive lifetime probation for a person convicted of a class A-II or class B felony.

Persistent Felony Offender

Section 70.10(1) defines a persistent felony offender as “a person, other than a persistent violent felony offender... who stands convicted of a felony after having previously been convicted of two or more felonies.” Subsection (2) authorizes the court to impose a sentence consistent for a class A-I felony.

Misdemeanants and Violators

Section 70.15 imposes definite sentences for misdemeanors and violations. Subsection (1) imposes sentences for class A misdemeanors not to exceed 1 year. Subsection (2) imposes a sentence of not to exceed 3 months for a class B misdemeanor. Subsection (4) imposes a sentence not to exceed 15 days for a violation.

Additional Punishment Enhancements

The New York State Division of Criminal Justice Services website contains the following link <http://criminaljustice.state.ny.us/legalservices/legislation.htm> which provides a recent history of criminal justice legislation related to punishment and sentencing enhancements, some of which will be discussed in the chapters that follow. For example, in 1999, the Clinic Access & Anti-Stalking Act of 1999 prohibited conduct that criminally interferes with health care services and places of religious worship. In 2001, the Anti-Terrorism Act was passed which created the Office of Public Security and established felony offenses for providing support for acts of terrorism and hindering terrorism prosecutions. The Governor later signed the Anti-Terrorism Preparedness Act of 2004 which changed the name of the Office of Public Security to the Office of Homeland Security and created felonies for storing or manufacturing biological agents.

Other Punishments

Conditional Discharge

New York does contain provisions for parole, which it terms “conditional discharge.” According to **Section 65.05(1)** “if the court, having regard to the nature and circumstances of the offense and to the history, character and condition of the defendant, is of the opinion that neither the public interest nor the ends of justice would be served by a sentence of imprisonment and that probation supervision is not appropriate.” For felonies, conditional discharge is to be at least for three years after release and for misdemeanors and violations, the term of conditional discharge is for one year.

Probation

Probation is set aside in cases where, according to **Section 65.00**: (i) Institutional confinement for the term authorized by law of the defendant is or may not be necessary for the protection of the public; (ii) the defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision; and (iii) such disposition is not inconsistent with the ends of justice.

Restitution

Restitution is a supplementary punishment that requires the defendant to pay back the fruits of the crime to the victim or pay for out-of-pocket losses caused by the crime. The court determines the amount of the fruits of the offense and out-of-pocket expenses based on the victim impact statement provided to the court.

Fines

According to **Article 80(1)**, the court may impose a fine as a punishment.

1. A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding the higher of
 - a. five thousand dollars; or
 - b. double the amount of the defendant's gain from the commission of the crime; or
 - c. if the conviction is for any felony defined in article two hundred twenty or two hundred twenty-one of this chapter, according to the following schedule:
 - (i) for A-I felonies, one hundred thousand dollars;
 - (ii) for A-II felonies, fifty thousand dollars;
 - (iii) for B felonies, thirty thousand dollars;
 - (iv) for C felonies, fifteen thousand dollars.

Victim Impact Statement

During sentencing, the victim has the right to make a statement to the court which may impact the amount of punishment the defendant receives. This procedure is defined in §380.50 of the Criminal Procedure Law. If the offender is charged with a homicide, then a member of the victim's family or the victim's legal guardian will make the statement on the victim's behalf. The victim impact statement includes allegations about the crime that were not fully explored during the proceedings or that materially vary from or contradict the evidence at trial.

THE DEATH PENALTY

In 1995, New York reinstated the death penalty pursuant to the 1995 Death Penalty Legislation. The law included the sentence of life imprisonment without parole as an alternative to the death penalty with respect to offenders convicted of murder in the first degree, and death by lethal injection legislation. However, in 2004, the death penalty was declared unconstitutional. It has not been deemed constitutional since then. There is only one prisoner currently living on death row, and until the death penalty is reinstated, his sentence will remain life without parole. The inmate, John Taylor, killed five employees execution style in a Wendy's restaurant in Queens in 2000. Taylor's case will be discussed in greater detail in Chapter Eleven. Prisoners like Taylor who are sent to death row spend their days in the Unit for Condemned Prisoners at Clinton Correctional Facility near the Canadian border. The following link, maintained by the Death Penalty Information Center, <http://www.deathpenaltyinfo.org/state/> provides basic information about the death penalty in New York

The case in which the Court of Appeals declared the death penalty unconstitutional is discussed next. In this case, the defendant presented several issues for appellate review. For this discussion, one issue the defendant made for the Court of Appeals to review was the constitutionality of the deadlock jury instructions. The relevant portion of **Section 400.27(10)** of the Criminal Procedure Law provides the nature of the instruction which states:

[T]he court shall deliver a charge to the jury on any matters appropriate in the circumstances. In its charge, the court must instruct the jury that with respect to each count of murder in the first degree the jury should consider whether or not a sentence of death should be imposed and whether or not a sentence of life imprisonment without parole should be imposed, and that the jury must be unanimous with respect to either sentence. The court must also instruct the jury that in the event the jury fails to reach unanimous agreement with respect to the sentence, the court will sentence the defendant to a term of imprisonment with a minimum term of between twenty and twenty-five years and a maximum term of life. Following the court's charge, the jury shall retire to consider the sentence to be imposed.

PEOPLE V. LAVALLE
Court of Appeals of New York
783 N.Y.S. 2d 485 (2004)

Opinion By: Smith, J.

The issue in this case concerns whether the deadlock instruction for a jury in a capital murder case is constitutional.

Defendant was found guilty of first degree murder in the course of and in furtherance of first degree rape. Defendant was sentenced to death. On May 31, 1997, the body of Cynthia Quinn was found in the woods near her home in Yaphank in Suffolk County after she left in the morning for her customary jog. Her neck, chest, back, and arms were covered with 73 puncture wounds from a screwdriver-type instrument, and she had a broken rib, bruises on her arms and abrasions on her body. She had also been raped. Her body had been found by the police who were searching for her.

Two days after her murder, the police arrested defendant in connection with a robbery of another woman on the same day that Cynthia Quinn's body was found. In his interrogation, he initially denied the robbery but eventually admitted that he had an encounter with the victim. He stated that he accidentally hit her car with his car, and when he pulled over, she got out and began yelling at and hitting him with her pocketbook. He grabbed her pocketbook, threw it over a fence, pushed her in her car to calm her down, and got into the car next to her. She then ran for help to a nearby house.

When the victim gave her statement two days earlier, she stated that he hit her with his car and forced his way into her car where she bit his finger and ran for help.

During the interrogation, defendant also eventually admitted to the murder of Cynthia Quinn. He stated that he had been urinating on the side of the road as she jogged by, and she began yelling at him that he was a bum and should use a restroom. He became angry, backed her into the woods, and when she started waving a piece of metal at him, he grabbed it and started stabbing her. When she fell down, he raped her. He then sat down and cried.

The jury found defendant guilty of first degree murder and second degree murder, but found him not guilty of robbery. After the penalty phase of the trial, the jury rendered a verdict that defendant be sentenced to death. The trial court dismissed the second degree murder guilty verdict since he was convicted on the first degree charge.

The issue in this analysis rose in the penalty phase of the trial. The defendant raised a motion that the deadlock instruction to the jury prior to its deliberation of the appropriate sentence for defendant, pursuant to CPL §400.27(10), was unconstitutional. The trial court instructed the jurors on their "duty to decide whether defendant should be sentenced to death or life without parole. Either choice had to be unanimous." The court further instructed the jurors that if they failed to agree, then the court would impose a sentence of life imprisonment with parole eligibility after defendant serves 20 to 25 years. In New York, jurors are required to know the consequences to the defendant on a deadlock. According to the Court of Appeals, "No other death penalty scheme in the country requires judges to instruct jurors that if they cannot unanimously agree between two choices, the judge will sentence defendant to a third, more lenient, choice."

Two issues emerged in the court's consideration of the constitutionality of the deadlock instructions. First, the deadlock instruction interjects the fear that if jurors do not reach unanimity, the defendant may be paroled in 20 years and pose a threat to society. Thus, there is a fear about future

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dangerousness. Future dangerousness, however, is not an aggravating factor a jury may consider during the penalty phase. The Court of Appeals reasoned, “By interjecting future dangerousness, the deadlock instruction gives rise to an unconstitutionally palpable risk that one or more jurors who cannot bear the thought that a defendant may walk the streets again after serving 20 to 25 years will join jurors favoring death in order to avoid the deadlock sentence...For jurors who are inclined toward life without parole, the choice is between death and life with parole...The choice of death [thus] results not through ‘a comparison of views, and by arguments among the jurors themselves,’ but through fear and coercion.”

When constructing the statute, however, the Legislature did not construe a life with parole option. The New York State Legislature was, however, *aware* of the danger of the deadlock instruction on coercive verdicts. During deliberations on the death penalty statute in 1995, one legislator posed the concern that forcing jurors to choose one option or another unanimously, knowing that a failure to agree means that they would face a penalty less than either of the two that they are in dispute over puts additional pressure on jurors. Although the alternative sentence had been considered as a third option, the Legislature overall felt that when having a jury consider something as serious as the death penalty, they should be unanimous, and if they can’t be unanimous, then the judge would enact a lesser penalty.

The Court of Appeals felt it improper that a jury should have to focus on predicting a defendant’s future dangerousness. “The jury should instead focus on determining whether life or death is the appropriate punishment.” Although the jurors in the instant case did not indicate that they were deadlocked, the issue in this case is that jurors in a capital case are given an instruction that may coerce them into surrendering their beliefs. The “motivating fear in the minds of a juror in a numerical minority is likely to be that a vote for life without the possibility of parole is really a vote for life with the possibility of parole.” Also, “as it stands now, in the event of a deadlock, the defendant might receive a sentence that none of the jurors could have considered or might even have considered palatable.”

The Court secondly argued that the instruction does not satisfy the due process clause of Article I of the State Constitution. A “vote for life imprisonment or death, driven by the fear that a defendant might be parole-eligible if jurors fail to reach unanimity, does not satisfy the heightened standard of reliability required by our State Constitution...Our State Constitution does not permit a death sentence imposed by jurors who may have chosen that option based on rank speculation about a defendant’s eventual release into society.”

The court nevertheless declined to create a new instruction, instead it relegated that responsibility to the Legislature as the “legislative prerogative.” The court recognized its power to “eliminate an unconstitutional sentencing procedure” but not the power “to fill the void with a different procedure, particularly one that potentially imposes a greater sentence than the possible deadlock sentence that has been proscribed.”

The court concluded that the deadlock instruction is therefore unconstitutional and that “under the present statute, the death penalty may not be imposed. Cases in which death notices have been filed may go forward as no capital first degree murder prosecutions.”

Accordingly, the judgment should be modified by vacating the sentence of death and remitting to Supreme Court, Suffolk County for recommencing, and, as so modified, affirmed.

As a postscript, in 2005, a legislative committee voted down a bill to reinstate New York’s death penalty. The bill was killed in the Assembly by an 11-to-7 committee vote. In response, Governor Pataki accused the assemblymen of protecting criminals over New Yorkers.¹

REVIEW QUESTIONS

1. Unlike indeterminate sentences, determinate sentences _____.
 - A. are perceived as more lenient toward offenders
 - B. remove sentencing discretion from the judge
 - C. provide no conditional release
 - D. are applicable to class A felonies

2. In New York the death penalty is _____.
 - A. officially abolished
 - B. a permissible sentence
 - C. unconstitutional
 - D. widely applied

3. A supplemental punishment that requires the defendant to pay the victim back is called _____.
 - A. conditional release
 - B. restitution
 - C. probation
 - D. surcharge

4. The overall purpose of the Sentencing Reform Act of 1995 is to _____.
 - A. consider sentencing according to the seriousness of the crime and the nature of the offender
 - B. create a sentencing guideline like the federal system
 - C. remove determinate sentences
 - D. treat all offenders as violent felons

5. In New York, a persistent felony offender is one who _____.
 - A. commits a first violent felony
 - B. was previously convicted of one felony
 - C. was previously convicted of two felonies
 - D. keeps failing to appear in court.

¹ Powell, M. (2005, April 13). In N.Y., Lawmakers vote not to reinstate capital punishment. *The Washington Post*.

ANSWERS

1. B; 2. C; 3. B; 4. A; 5. C