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Sentencing Statutes: The Deviation from Federal Sentencing Guidelines and Variation among States' Sentencing Laws

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SENTENCING STATUTES: THE DEVIATION FROM FEDERAL SENTENCING GUIDELINES AND VARIATION AMONG STATES' SENTENCING LAWS

Only the man who has enough good in him to feel the justice of the penalty can be punished ~William Ernest Hocking

INTRODUCTION

Over the years, many cases have been brought before the United States Supreme Court to decide whether a state law is unconstitutional or whether the matter has federal standing.¹ Under Amendment X of the United States Constitution, states possess reserved powers separate from the federal government's powers.² These reserved powers grant each individual state the ability to create and abide by their own constitutions, statutes, and amendments, as long as there is no conflict with the United States Constitution.³ Therefore, a state's power to create its own legislation allows it to utilize all, some, or none of the federal legislation or suggested materials as a model.⁴

¹ See *Ewing v. California*, 538 U.S. 11, 29-30 (2003) (holding state's sentence not grossly disproportionate and not in violation of Eighth Amendment); see also *Lockyer v. Andrade*, 538 U.S. 63, 77 (2003) (upholding defendant's state sentence). "[I]t was not an unreasonable application of our clearly established law for the California Court of Appeal to affirm Andrade's sentence of two consecutive terms of twenty-five years to life in prison." *Id.* at 77.

² See U.S. CONST. amend. X (stating powers reserved to states). "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Id.*; see also *Alden v. Maine*, 527 U.S. 706, 714 (1999) (reiterating states as sovereign entities); *United States v. Darby*, 312 U.S. 100, 124 (1941) ("There is nothing in the history . . . to suggest . . . its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.").

³ See U.S. CONST. art. VI, cl. 2 ("This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."); see also *Darr v. Burford*, 339 U.S. 200, 217 (1950) ("[S]tates have the major responsibility for the maintenance of law and order within their borders . . .").

⁴ See STANDARDS FOR CRIMINAL JUSTICE: SENTENCING pt. II, 18-2.1 (AM. BAR ASS'N 1994) (providing model for state legislature to view when designing sentencing system).

Standard 18-2.1 Multiple Purposes; Consequential and Retributive Approaches
A. Societal Purposes

Although states have some prohibitions of powers, they do possess the power to create their own sentencing statutes.⁵ The ability to create state sentencing laws arises from Amendment X of the United States Constitution.⁶ While keeping in mind that the interpretation cannot conflict with supreme laws, neighboring states can interpret sentencing models or create new sentencing laws however the state deems appropriate for its jurisdiction.⁷ The existence of multiple state sentencing laws and one uniform federal sentencing guideline creates a question of whether or not this is the most effective method of dealing with criminal offenders.⁸ Due to the increasing number of state sentencing guidelines and its supporters, state sentencing guideline developments are prospering.⁹

(a) The legislature should consider at least five different societal purposes in designing a sentencing system:

- i. To foster respect for the law and to deter criminal conduct.
- ii. To incapacitate offenders.
- iii. To punish offenders.
- iv. To provide restitution or reparation to victims of crime.
- v. To rehabilitate offenders.

(b) Determination of the societal purposes for sentencing is a primary element of the legislative function. The legislature may be aided by the agency performing the intermediate function.

Id.; see also U.S. SENTENCING GUIDELINES MANUAL § 3E1.1 (U.S. SENTENCING COMM’N 2016) (providing federal sentencing guidelines). When a federal court in any district sentences a defendant, it looks to the U.S. Guidelines Manual provided by the United States Sentencing Commission. *Id.*

⁵ See *infra* Part I, II, and III.

⁶ See U.S. CONST. amend. X (expressing state powers).

⁷ See *Harmelin v. Michigan*, 501 U.S. 957, 989 (1991) (recognizing varying levels of punishment for specific acts among states). One state may criminalize an act that another state does not criminalize, or assign a less severe punishment. *Id.* “What greater disproportion could there be than that?” *Id.* at 989-90; see also NORA V. DEMLEITNER, DOUGLAS A. BERMAN, MARC L. MILLER & RONALD F. WRIGHT, *SENTENCING LAW AND POLICY: CASES, STATUTES, AND GUIDELINES* 7 (Wolters Kluwer, 2nd ed. 2007) (discussing historical trends in theory of punishment); NICHOLAS N. KITTRIE, ELYCE H. ZENOFF & VINCENT A. ENG, *SENTENCING, SANCTIONS, AND CORRECTIONS: FEDERAL AND STATE LAW, POLICY, AND PRACTICE* 222 (Found. Press, 2nd ed. 2002) (explaining diversity of state guidelines). “One continuing concern is the ability to individualize sentencing and consider a wide range of sentencing purposes while maintaining an equitable sentencing system.” *Id.* at 215.

⁸ See NICHOLAS N. KITTRIE, ELYCE H. ZENOFF & VINCENT A. ENG, *SENTENCING, SANCTIONS, AND CORRECTIONS: FEDERAL AND STATE LAW, POLICY, AND PRACTICE* 222 (Found. Press, 2nd ed. 2002) (reasoning greater state guidelines success due to lack of federal features included in them).

⁹ See *id.* (analyzing why state sentencing guidelines are more popular than federal guidelines). State sentencing guidelines have the capability of “bringing greater fairness and rationality to sentencing, retaining more judicial discretion than federal version . . . permitting consideration of a wider range of sentencing purposes and offender characteristics,” and “emphasizing the goal of predicting and avoiding prison overcrowding.” *Id.* A more effective balance of “resource matching,

HISTORY

Although each state may create its own sentencing laws, the states tend to follow similar traditional social purposes behind sentencing.¹⁰ Deterrence, incapacitation, rehabilitation, and retribution, or just punishments, typically fall under one of the main categories of sentencing.¹¹ The purpose of deterrence is to increase the number of law-abiding citizens by deterring the public with serious consequences for criminal behavior.¹² Because some form of incapacitation generally follows an offense, whether it be incarceration or non-prison sanctions, jurisdictions can decide on the degree of incapacitation for the offender.¹³ While the punishing of offenders lost popularity around the 1950s, many states remain to keep punishment as the central objective of state sentencing laws.¹⁴ When appropriate and achievable, reparation or restitution is sought to replenish victims of crimes for their losses suffered.¹⁵ Rehabilitating offenders, whether incarcerated or not, has two intertwining goals: reform the offender while simultaneously accomplishing other societal objectives.¹⁶

sanction severity and type, allowable sentencing factors, and the degree of case-level discretion” contribute to the state sentencing guidelines meeting more success than federal guidelines. *Id.* at 226.

¹⁰ See NORA V. DEMLEITNER, DOUGLAS A. BERMAN, MARC L. MILLER & RONALD F. WRIGHT, *SENTENCING LAW AND POLICY: CASES, STATUTES, AND GUIDELINES 2* (Wolters Kluwer, 2nd ed. 2007) (addressing two categories of sentencing philosophers: consequentialist or deontological). Consequentialist philosophers “justify state punishment as a means of reducing the overall harms created by criminal behavior,” while deontological philosophers “justify state punishment as a means of righting the moral wrongs of criminal behavior.” *Id.*

¹¹ See *id.* (describing what is within each category); see also *Punishment – Theories of Punishment*, <http://law.jrank.org/pages/9576/Punishment-THEORIES-PUNISHMENT.html> (last visited Oct. 21, 2018) (claiming “[t]heories of punishment can be divided into two general philosophies: utilitarian and retributive.”). Under the utilitarian theory, punishment is a form of discouraging or deterring future wrongdoing. *Id.* The retributive theory suggests criminals deserve punishment for their criminal behavior, focusing “on the crime itself as the reason for imposing punishment.” *Id.*

¹² See Demleitner et. al., *supra* note 7, at 5 (summarizing theory behind deterrence). Deterrence can be a general punishment that “should prevent other people from committing criminal acts,” or specific punishment that “should prevent the same person from committing crimes.” See also *Punishment – Theories of Punishment*, <http://law.jrank.org/pages/9576/Punishment-THEORIES-PUNISHMENT.html> (last visited Oct. 21, 2018) (explaining types of deterrence).

¹³ See Demleitner et. al., *supra* note 7, at 5 (reasoning behind incapacitating offenders).

¹⁴ See *id.* (announcing return of punishing offenders).

¹⁵ See *id.* (explaining concept of victim restoration).

¹⁶ See *id.* at 5-6 (explaining purpose of rehabilitating offenders). The main goal of rehabilitating offenders is to reform them. *Id.* Rehabilitation also serves to deter criminal conduct and punish offenders. *Id.* at 6.; see also *Punishment – Theories of Punishment*, <http://law.jrank.org/pages/9576/Punishment-THEORIES-PUNISHMENT.html> (last visited Oct. 21, 2018) (stating rehabilitation typically includes treatment for afflictions and educational programs for competing in job market).

When a legislature is determining how to design and implement sentencing guidelines or laws, it must decide how much discretion is given to a judge or administrative agency.¹⁷ For example, a legislature can determine that a certain crime be punishable by a set term of imprisonment with no judicial or administrative discretion, by a general range of imprisonment from which the judge will decide the sentence, or by an extremely wide range of imprisonment imposed by a judge with the duration of the sentence decided by an administrative agency.¹⁸ Contemporary sentencing models stem from the previously mentioned statutory sentencing models and consist of determinate, indeterminate, mandatory minimums, presumptive sentencing guidelines, and voluntary and advisory sentencing guidelines.¹⁹ Over the years, the popularity of some models have fluctuated.²⁰ Recently, some states have replaced indeterminate sentencing with a more structured sentencing model, involving determinate sentencing, mandatory minimum penalties, and sentencing guidelines.²¹

Should concern arise regarding the constitutionality of a state's sentence under the United States Constitution, after exhausting all appeals, motions, and habeas corpus petitions in the state court, the federal government may receive a petition for a writ of habeas corpus to hear the case, and render a decision.²² A state prisoner can claim cruel and unusual

¹⁷ See *Kittrie et. al.*, *supra* note 8, at 209-12 (discussing statutory sentencing models).

¹⁸ See *id.* at 209-10 (citing state legislature's variety of statutory sentencing models). Utilization of these statutory sentencing models is not required, nor is there a rule against using a combination of the models, if applicable. *Id.* at 209.

¹⁹ See *id.* at 211-12 (listing contemporary sentencing models). A determinate sentence involves a "sentence of incarceration in which an offender is given a fixed term that may be reduced by good time or earned time." *Id.* An indeterminate sentence gives "an administrative agency authority to release an offender and determine whether an offender's parole will be revoked for violations of the conditions of release." *Id.* The mandatory minimum is a sentence "that is specified by statute and that may be applied for all convictions of a particular crime or a particular crime in which special circumstances." *Id.* Presumptive sentencing guidelines can occur if:

- (1) the appropriate sentence for an offender in a specific case is presumed to fall within a range of sentences authorized by sentencing guidelines that are adopted by a legislatively created sentencing body, usually a sentencing commission; (2) sentencing judges are expected to sentence within the range or provide written justification for departure; (3) the guidelines provide for some review, usually appellate, of the departure.

Id. Recommended sentencing policies that are not required by law are voluntary and advisory sentencing guidelines. *Id.*

²⁰ See *Kittrie et al.*, *supra* note 8, at 212 (describing transformation of sentencing from past to present).

²¹ See *id.* (explaining recent changes in sentencing).

²² See *Duncan v. Henry*, 513 U.S. 364, 365-66 (1995) (asserting state prisoners must alert state of federal claims under United States Constitution); see also *Picard v. Connor*, 404 U.S. 270, 275 (1971) (stating policy of federal-state comity in exhaustion doctrine); *Darr v. Burford*, 339 U.S. 200, 217 (1950) (explaining state court entitled to review its acts before state prisoner seeks federal

punishment under the Eighth Amendment if he or she is subjected to excessive sanctions.²³ The application of this doctrine, codified in 28 U.S.C. § 2254(b)-(c), requires that the state prisoner notify the state courts of the claim being challenged before a federal court can hear the prisoner's assertion regarding the legality of the current sentence.²⁴ This requirement ensures the state has an opportunity to correct any constitutional violations in the prisoner's claim first.²⁵

PART I – MASSACHUSETTS SENTENCING LAWS

In Massachusetts, the theories surrounding punishment of criminal offenders consists of protection of the public, reformation of the criminal, retribution, and deterrence.²⁶ A first degree murder conviction is punishable by state imprisonment for life without parole.²⁷ A conviction of second degree murder is punishable by state imprisonment for life with eligibility of parole after the term of years fixed by the court pursuant to Chapter 279,

relief); *see also* 28 U.S.C. § 2254(a), (d)(1)-(2) (2012) (citing federal remedies for state conviction and sentencing).

The Supreme Court, . . . a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254(a). “An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that – the applicant has exhausted the remedies available in the courts of the State” 28 U.S.C. § 2254(b)(1)(A).

²³ *See Harmelin*, 501 U.S. at 993 (citing *Page v. United States*, 462 F.2d 932, 935 (1972)) (asserting it is not cruel and unusual punishment when sentence is within statutory limits proscribed).

²⁴ *See* 28 U.S.C. § 2254(b)(1)(A) (2012) (asserting state prisoner applicant must exhaust all remedies available in state courts). A state prisoner “shall not be deemed to have exhausted the remedies available in the courts of the State . . . if he has the right under the law of the State to raise, by any available procedure, the question presented.” 28 U.S.C. § 2254(c). *See Picard*, 404 U.S. at 275-76 (discussing exhaustion doctrine application).

²⁵ *See O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (requiring state prisoners allow state courts “full and fair opportunity to resolve federal constitutional issues”); *see also Duncan*, 513 U.S. at 365 (explaining how state prisoner can exhaust all state remedies).

²⁶ *See* 32 Mass. Prac., Crim. L. § 7 (explaining theories of criminal punishment).

²⁷ *See* MASS. ANN. LAWS ch. 265, § 2(a) (LexisNexis 2017) (providing sentence for first degree murder). “Murder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with death or imprisonment for life, is murder in the first degree.” MASS. ANN. LAWS ch. 265, § 1 (LexisNexis 2017) (defining first degree murder). Murder that does not meet the first degree murder definition is murder in the second degree, which is a decision the jury finds. *Id.* (explaining who determines degree of murder and how); *see also Commonwealth v. Angiulo*, 615 N.E.2d 155, 161 (Mass. 1993) (“One convicted of murder in the first degree is subject to life imprisonment without the possibility of parole.”).

Section 24 of the Annotated Laws of Massachusetts.²⁸ The court utilizes indeterminate sentencing and may fix a term of imprisonment with a minimum term not less than fifteen years and not exceeding twenty-five years, and a maximum term not exceeding the longest term of punishment for second degree murder fixed by the law.²⁹ Manslaughter is punishable by state imprisonment not exceeding twenty years or by imprisonment in jail or a house of correction not exceeding two and one half years, and a fine not exceeding one thousand dollars.³⁰ If the court sentences the defendant to state prison on a manslaughter conviction, the court fixes a maximum term not exceeding the longest term of punishment for manslaughter fixed by the law, twenty years in this case, and at least a one year minimum term.³¹

PART II – NEW HAMPSHIRE SENTENCING LAWS

In New Hampshire, a felony conviction can result in a defendant going to prison for more than one year.³² New Hampshire separates felonious crimes into two classes, “A” and “B,” however, although murder is a felony, it does not fall under either of these classes.³³ First degree murder, second degree murder, and manslaughter have their own sentencing

²⁸ See MASS. ANN. LAWS ch. 265, § 2(c) (LexisNexis 2017) (detailing sentencing for second degree murder); see also *Commonwealth v. Mangum*, 256 N.E.2d 297, 298 (Mass. 1970) (reinforcing state mandatory punishment of life imprisonment for second degree murder conviction). A significant difference between a sentence of life imprisonment for first degree murder and second degree murder is that a person convicted of first degree murder is not eligible for parole. *Commonwealth v. Glass*, 519 N.E.2d 1311, 1316 (Mass. 1988) (contrasting parole eligibility for two different crime convictions with similar sentences).

²⁹ See MASS. ANN. LAWS ch. 279, § 24 (LexisNexis 2017) (stating indeterminate sentencing for second degree murder); see also *Commonwealth v. Perry*, 450 N.E.2d 615, 619 (Mass. 1983) (explaining parole eligibility for second degree murder conviction after serving fifteen years in prison).

³⁰ See MASS. ANN. LAWS ch. 265, § 13 (LexisNexis 2017) (reviewing sentences for manslaughter); see also *Commonwealth v. Catalina*, 556 N.E.2d 973, 976 (Mass. 1990) (citing *Commonwealth v. Godin*, 371 N.E.2d 438, 442 (Mass. 1977)) (explaining common law is sole basis for manslaughter elements as there is no statutory definition); *Commonwealth v. Knight*, 637 N.E.2d 240, 247 (1994) (“[A]n unlawful killing that is not murder is manslaughter.”); *Commonwealth v. Skinner*, 556 N.E.2d 1014, 1017 (Mass. 1990) (citing *Lannon v. Commonwealth*, 400 N.E.2d 862, 865 (Mass. 1980)) (emphasizing malice distinguishes murder and manslaughter). “Malice is an essential element of murder.” *Lannon*, 400 N.E.2d at 865.

³¹ See MASS. ANN. LAWS ch. 279, § 24 (LexisNexis 2018) (outlining indeterminate sentence for manslaughter). “[T]he minimum term shall be a term set by the court, except that, where an alternative sentence to a house or correction is permitted for the offense, a minimum state prison term may not be less than one year.” *Id.*

³² See N.H. REV. STAT. ANN. § 625:9(III) (LexisNexis 2018) (defining felony).

³³ See *id.* (categorizing murder felonies from A and B felonies).

laws.³⁴ A conviction of first degree murder holds a sentence of life imprisonment without parole.³⁵ A second degree murder conviction is punishable by a maximum term of imprisonment for life or the court may order its own term.³⁶ However, when a court orders a life sentence for second degree murder, both the minimum and maximum terms are within the court's discretion.³⁷ When a court orders a maximum term other than a life sentence for second degree murder, the minimum cannot exceed half of the maximum term.³⁸ If evidence supports the presence of an extreme indifference to the value of human life, then the jury may convict with murder in the second degree; if an extreme indifference does not exist, the jury may convict by manslaughter.³⁹ Manslaughter is punishable by imprisonment not exceeding thirty years.⁴⁰ In addition to a sentence of imprisonment, a fine may be imposed not exceeding \$4,000 for a felony.⁴¹

³⁴ See *id.* § 651:2(II) (showing first and second degree murder and manslaughter not under felony class).

³⁵ See *id.* § 630:1-a(III) (stating sentence for first degree murder).

A person is guilty of murder in the first degree if he: (a) Purposely causes the death of another; or (b) Knowingly causes the death of: [P]urposely' shall mean that the actor's conscious object is the death of another, and that his act or acts in furtherance of that object were deliberate and premeditated.

Id. §§ 630:1-a(I)-(II); see also *State v. Greenleaf*, 54 A. 38, 43 (N.H. 1902) (asserting state must show malice, deliberation, and premeditation for first degree murder conviction). Although premeditation and deliberation must occur before the actual killing by some amount of time, the time does not have to be long nor is there a particular amount of time required. *State v. Shackford*, 506 A.2d 315, 317 (N.H. 1986) (citing *State v. Place*, 495 A.2d 1253, 1255 (N.H. 1985)) (discussing elements of first degree murder).

³⁶ See N.H. REV. STAT. ANN. § 630:1-b(II) (LexisNexis 2018) (stating sentence for second degree murder). "A person is guilty of murder in the second degree if: (a) He knowingly causes the death of another; or (b) He causes such death recklessly under circumstances manifesting an extreme indifference to the value of human life." *Id.* § 630:1-b(I).

³⁷ See *id.* § 651:2(II)(d) (explaining indeterminate sentence for second degree murder conviction).

³⁸ See *id.* (outlining maximum and minimum terms for second degree murder conviction).

³⁹ See *State v. Schultz*, 677 A.2d 675, 678 (N.H. 1996) (reiterating critical factor of "extreme indifference" is degree of disregarding risks of death to another); see also *State v. Dow*, 489 A.2d 650, 652 (N.H. 1985) (quoting *State v. Howland*, 402 A.2d 188, 191 (N.H. 1979)) (explaining juries make factual determinations whether to convict defendant of second degree murder or manslaughter).

⁴⁰ See N.H. REV. STAT. ANN. § 630:2(II) (LexisNexis 2018) (stating sentence for manslaughter). "A person is guilty of manslaughter when he causes the death of another: (a) Under the influence of extreme mental or emotional disturbance caused by extreme provocation but which would otherwise constitute murder; or (b) Recklessly." *Id.* § 630:2(I).

⁴¹ See N.H. REV. STAT. ANN. § 651:2(IV) (LexisNexis 2018) (describing potential additional punishment on top of imprisonment sentence).

PART III – NEW YORK SENTENCING LAWS

In New York, a felony means an offense for which imprisonment can exceed one year.⁴² New York has classifications ranging from Class A to Class E for felonies, with Class A consisting of two subcategories, A-1 and A-II.⁴³ Within the individual section for a particular felony is the appropriate classification.⁴⁴ Murder in the first and second degree are class A-I felonies, manslaughter in the first degree is a class B felony, and manslaughter in the second degree is a class C felony.⁴⁵ The state abides by determinative sentences that run for a specific period and indeterminate sentences that state a minimum and maximum range.⁴⁶

With some exceptions, if a court orders a sentence of imprisonment for a felony, it is an indeterminate sentence.⁴⁷ The term of an indeterminate sentence is to be not less than three years and depending on the felony class, the maximum term fixed by the court varies.⁴⁸ A class A felony maximum sentence term is life imprisonment, a class B felony sentence term cannot exceed twenty-five years, and a class C felony sentence term cannot exceed

⁴² See N.Y. PENAL LAW § 10.00(5) (Consol. 2018) (defining felony).

⁴³ See *id.* § 55.05(1) (stating felonies classified “for purpose of sentence”). This type of classification system seeks to avoid “the need for separate authorized sentences for each offense. Under this system the specific offenses are merely labeled as to category and all aspects of the sentence are dealt with in one title of the law.” N.Y. PENAL LAW § 55.05 note (Consol. 2017) (Commission Staff Notes).

⁴⁴ See *id.* § 55.10(1) (explaining location of classification of felony).

⁴⁵ See *id.* §§ 125.15, .20, .25, .27 (classifying specific felonies).

A person is guilty of manslaughter in the first degree when: (1) With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or (2) With intent to cause the death of another person, he causes the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance

Id. § 125.20 (defining first degree manslaughter). “A person is guilty of manslaughter in the second degree when: (1) He recklessly causes the death of another person; or . . . (3) He intentionally causes or aids another person to commit suicide.” *Id.* § 125.15 (defining second degree manslaughter).

⁴⁶ See *People v. Hassin*, 48 A.D.2d 705, 705 (App. Div. 1975) (articulating if statute provides indeterminate sentence for certain criminal conviction, court cannot impose definite sentence); see also Robert Reuland, *New York Sentencing Chart: Criminal Sentences in New York*, LAW OFFICES OF ROBERT C. REULAND, P.C., <http://www.reulandlaw.com/useful-info/new-york-sentencing-chart/> (last visited Sept. 23, 2018) (describing New York’s felony classifications in statutes).

⁴⁷ See N.Y. PENAL LAW § 70.00 (Consol. 2018) (explaining type of imprisonment sentence for felony); *People v. Kerrigan*, 37 A.D.2d 770, 770 (App. Div. 1971) (reiterating imprisonment sentence for felony is indeterminate sentence with maximum of at least three years).

⁴⁸ See N.Y. PENAL LAW § 70.00(2) (Consol. 2018) (discussing indeterminate sentences broadly).

fifteen years.⁴⁹ Under an indeterminate sentence, the minimum period of imprisonment is to be not less than one year and similar to the maximum term, the court fixes the minimum period depending on the class of the felony.⁵⁰ With the exception of murder in the first degree, class A-I felony imprisonment periods are to be between fifteen years and twenty-five years.⁵¹ Murder in the first degree, that does not obtain a sentence of death or life imprisonment without parole, requires a minimum imprisonment period between twenty and twenty-five years.⁵² A defendant convicted of murder in the first degree and sentenced to life imprisonment without parole cannot become eligible for parole or conditional release and the sentence is an indeterminate sentence.⁵³ The minimum period fixed by a court for all other felonies is between one year and not more than one-third of the maximum term.⁵⁴

ANALYSIS

Having uniform state sentencing guidelines or laws could create less confusion and more equality for the legal system across the nation, however, this uniform system would simultaneously take away from each state's independence.⁵⁵ Each state is aware of the most common and frequent crimes that occur within that state's borders, and overall, each legislature has a better understanding of what would benefit the state compared to other states.⁵⁶ In order to alleviate a strict and uniform sentencing standard that all states abide by, there is the option of having uniform sentence ranges for a

⁴⁹ See *id.* § 70.00(2)(a)-(c) (comparing felony classes' maximum term of sentence).

⁵⁰ See *id.* § 70.00(3) (describing minimum period of imprisonment under indeterminate sentences). This minimum period controls the length of time the prisoner must serve before becoming eligible for parole consideration. *Id.*

⁵¹ See *id.* § 70.00(3)(a)(i) (pointing to A-I felony imprisonment minimum periods).

⁵² See *id.* (highlighting A-I felony first degree murder minimum period of imprisonment); see also N.Y. PENAL LAW § 60.06 (Consol. 2018) (listing options that court can sentence defendant convicted of first degree murder).

⁵³ See N.Y. PENAL LAW § 70.00(5) (Consol. 2018) (stating life imprisonment without parole as indeterminate sentence).

⁵⁴ See *id.* § 70.00(3)(b) (defining minimum period fixed by court for all other felonies).

⁵⁵ See U.S. CONST. amend. X (asserting state powers).

⁵⁶ See *Harmelin*, 501 U.S. at 989-90 (contrasting punishment for particular crimes based on individual states desires); see also Alison Lawrence, *Making Sense of Sentencing: State Systems and Polices*, NAT'L CONF. OF ST. LEGISLATURES 32 (2015) (discussing states creating own unique sentencing system); Alison Lawrence, *Trends in Sentencing and Corrections: State Legislatures*, NAT'L CONF. OF ST. LEGISLATURES (2013) (declaring states involvement in collecting data to find effective sentencing guidelines and correction polices).

particular crime that it must be within and formulate a similar structure of communicating the sentences to readers.⁵⁷

Although each state creates sentencing structures favoring their own respective desires, it is an interesting realization how bordering states sentencing structures and laws are different.⁵⁸ For instance, New York and New Hampshire classify felony crimes into different classes, each with their own individual particularized sentence, as opposed to Massachusetts where each criminal statute provides the penalties for particular felonies.⁵⁹ New York differentiates manslaughter from Massachusetts and New Hampshire by splitting it into first degree and second degree manslaughter, each categorized under a different felony class.⁶⁰ How states communicate penalties for felonies to the public is also unique.⁶¹

Massachusetts defines what constitutes first and second degree murder in the same statute.⁶² The punishments for first and second degree murder appear in a separate statute.⁶³ Massachusetts does not have a statutory definition for manslaughter, however, there is a statute that solely addresses the punishment for an individual convicted of manslaughter.⁶⁴ Along with the aforementioned penalties in other statutes, Massachusetts

⁵⁷ See Alison Lawrence, *Making Sense of Sentencing: State Systems and Polices*, NAT'L CONF. OF ST. LEGISLATURES 3 (2015) (defining sentencing systems); see also NICHOLAS N. KITTRIE, ELYCE H. ZENOFF & VINCENT A. ENG, *SENTENCING, SANCTIONS, AND CORRECTIONS: FEDERAL AND STATE LAW, POLICY, AND PRACTICE* 211-12 (Foundation Press, 2nd ed. 2002) (discussing sentencing options).

⁵⁸ See Brian J. Ostrom, Charles W. Ostrom, Roger A. Hanson & Matthew Kleiman, *Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States*, NAT'L CTR. FOR ST. CTS. (2008), <http://www.ncsc.org/~media/microsites/files/csi/assessing%20consistency.ashx> (reporting considerable variation among state sentencing guidelines).

⁵⁹ See N.Y. PENAL LAW § 70.00 (Consol. 2018) (demonstrating usage of felony classes); N.H. REV. STAT. ANN. § 651:2(II)(a)-(b), (d) (LexisNexis 2018) (showing felony classes); MASS. ANN. LAWS ch. 265, §§ 1, 2, 13, 24 (LexisNexis 2018) (highlighting no usage of classes for felonies).

⁶⁰ See N.Y. PENAL LAW §§ 125.15, .20 (Consol. 2018) (exhibiting two degrees of manslaughter in New York); N.H. REV. STAT. ANN. § 630:2 (LexisNexis 2018) (defining manslaughter without degrees); MASS. ANN. LAWS ch. 265, § 13 (LexisNexis 2018) (defining manslaughter without degrees).

⁶¹ See Alison Lawrence, *Making Sense of Sentencing: State Systems and Polices*, NAT'L CONF. OF ST. LEGISLATURES (2015) (describing each state's system as unique).

⁶² See MASS. ANN. LAWS ch. 265, § 1 (LexisNexis 2018) (exhibiting two definitions in one statute).

⁶³ See *id.* § 2 (demonstrating usage of one statute to explain two different crimes' punishments).

⁶⁴ See *id.* § 13 (providing one statute solely for asserting manslaughter punishment); *Catalina*, 556 N.E.2d at 976 (citing *Commonwealth v. Godin*, 371 N.E.2d 438, 442 (Mass. 1977)) (stating no statutory definition for manslaughter).

provides a statute disclosing indeterminate sentences for an individual sentenced to state prison.⁶⁵

New Hampshire divides first degree murder, second degree murder, and manslaughter into separate statutes; each respective statute defines the elements of the crime and the punishment for a conviction.⁶⁶ New Hampshire does provide a separate statute for sentences and limitations, however for first degree murder and manslaughter, the statute directs the reader to the statute pertaining to that particular crime, as that particular statute provides the sentence.⁶⁷ The sentencing and limitations statute addresses second degree murder by explaining the minimum term application based on the maximum term.⁶⁸

New York has a separate statute for each crime and first degree murder, second degree murder, first degree manslaughter, and second degree manslaughter each also have their own statute describing the elements and classes of the felonies.⁶⁹ New York provides the sentence of imprisonment for each felony class in a separate statute.⁷⁰ This statute directs and unveils New York's usage of indeterminate sentences, alternative definite sentences, and determinate sentences.⁷¹

A structure that allows the court to fix the maximum within a statutory range is more beneficial to offenders because two separate convictions of the same crime may have unique fact patterns which could call for application of different terms.⁷² Although there is no requirement that two separate defendants convicted of the same crime with similar facts receive equal punishments, a judge's discretion must remain in the particular statute's boundaries and not change the type of sentence from an indeterminate sentence to a determinate sentence.⁷³ The primary purpose of

⁶⁵ See MASS. ANN. LAWS ch. 265, § 24 (LexisNexis 2017) (asserting indeterminate sentencing usage in Massachusetts).

⁶⁶ See N.H. REV. STAT. ANN. §§ 630:1-a, :1-b, :2 (LexisNexis 2017) (showing one statute containing definition and sentence of only one particular crime).

⁶⁷ See *id.* § 651:2 (providing sentencing for crimes).

⁶⁸ See *id.* § 651:2(II)(d) (explaining minimum sentence term for second degree murder).

⁶⁹ See N.Y. PENAL LAW §§ 125.15, .20, .25, .27 (Consol. 2017) (showing one statute describing only one crime and corresponding felony class).

⁷⁰ See *id.* § 70.00 (asserting sentence of imprisonment for felonies in one statute).

⁷¹ See *id.* (highlighting usage of different types of sentences).

⁷² See N.Y. PENAL LAW § 70.00 note (Consol. 2017) (Commission Staff Notes) (noting ability of court to fix maximum term of sentence according to each individual case); see also Alison Lawrence, *Making Sense of Sentencing: State Systems and Polices*, NAT'L CONF. OF ST. LEGISLATURES 4 (2015) (describing indeterminate sentencing as highly individualized penalty).

⁷³ See *People v. Givens*, 181 A.D.2d 1031 (App. Div. 1992) (citing *People v. Brown*, 136 A.D.2d 1, 16 (App. Div. 1988)) (discussing sentences for defendants in similar situations); *People v. Hassin*, 48 A.D. 2d 705, 705 (App. Div. 1975) (asserting court has no authority to impose determinate sentence when statute provides for indeterminate sentence).

requiring a maximum term of an indeterminate sentence to be at least three years is to assure that the parole board supervises the prisoner's return to society.⁷⁴ The minimum period a prisoner must serve before becoming eligible for parole gives the court, in some instances, more discretion to ensure the prisoner serves time for the crime committed.⁷⁵

A determinate sentencing structure leaves no room for courts' discretion in deciding the length of a sentence, nor do parole boards play a role.⁷⁶ This type of sentencing system could be a strong deterrence for committing crimes because there is no option of pleading to or hoping for a lesser sentence.⁷⁷ Additionally, this could help long-term cost savings because repeat offenders will be in prison instead of society.⁷⁸ However, disadvantages of this system include overcrowding in prisons and increased costs of imprisonment.⁷⁹

CONCLUSION

Each state may have its own sentencing structure based on the power granted to it by the United States Constitution. Because of this power, states currently vary in the structure of sentencing laws. As the past demonstrates, the types of sentencing laws change in order to accommodate the needs of states and to protect an ever-changing society. Although nationwide uniform sentencing laws may not be the appropriate solution, there should be some uniformity among the states. Regardless of what the sentencing structure and laws are in a state, the ultimate objective should be to protect the public by holding offenders accountable for their actions.

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⁷⁴ See N.Y. PENAL LAW § 70.00 note (Consol. 2017) (Commission Staff Notes) (noting ability of court to fix maximum term of sentence according to each individual case).

⁷⁵ See N.Y. PENAL LAW § 70.00 (Consol. 2017) (discussing imprisonment length and parole eligibility).

⁷⁶ See Alison Lawrence, *Making Sense of Sentencing: State Systems and Polices*, NAT'L CONF. OF ST. LEGISLATURES 4 (2015) (explaining determinate sentencing).

⁷⁷ See *id.* (noting lack of court's discretion in determinate sentences). The foundation for determinate sentencing is "to increase certainty in the amount of time served, improve proportionality of the sentence to the gravity of the offense, and reduce disparities that might exist when sentences are more indeterminate." *Id.*

⁷⁸ See *Sentencing – Sentencing Guidelines: Fair or Unfair, Further Readings*, <http://law.jrank.org/pages/10153/Sentencing.html> (last visited Sept. 30, 2018) (explaining advantages of determinate sentencing). States would save money on "property loss, losses from pain and suffering, lost wages, police security, and medical insurance costs resulting from the crimes of these offenders." *Id.*

⁷⁹ See *id.* (stating disadvantages of determinate sentencing structures).