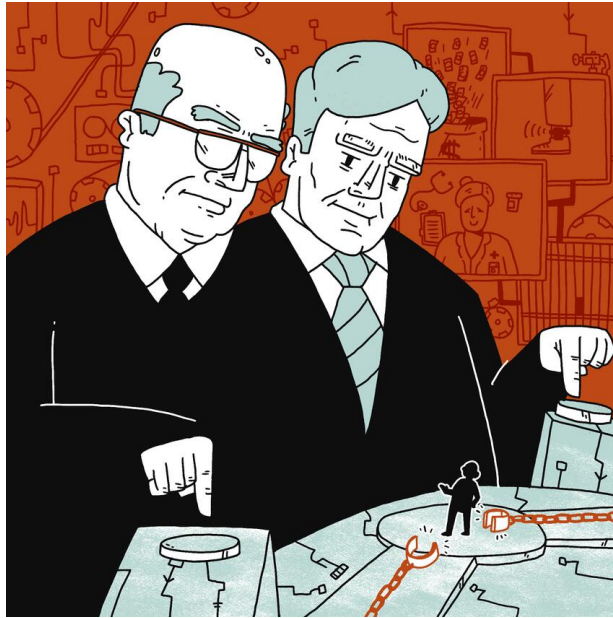


BEYOND CRIMINAL COURTS

PATH OF THE CASE

Sentencing

Judges have a lot of power in determining punishment, and there are also structural elements (as decided by the state and federal legislatures in the creation of criminal law and procedure) that dictate sentencing.



After an accused person has taken a guilty plea or has been found guilty, the court holds a sentencing hearing where the judge hears from all parties (defense, prosecution, probation) and then decides the punishment.

Types of sentences include incarceration, fines, probation, Alternatives to Incarceration (ATI), restitution, community service, and, in some states, the death penalty.



A judge gets to choose whatever sentence they want.



While the judge often has discretion, the crimes a person is found guilty of (or pleads guilty to) often require a minimum (and a maximum) sentence. For example, in New York, if you are convicted of robbery in the third degree, you can be sentenced to a minimum of 2-3 years in prison, or up to 7 years in prison. If you are convicted of robbery in the second degree, the minimum is 3.5 years and the maximum goes up to 15 years.

There are also laws that control aspects of sentencing (for example, authorizations for specific courts, three strikes [https://www.law.cornell.edu/wex/three_strikes] and two strikes laws [<https://www.themarshallproject.org/2021/11/11/two-strikes-and-you-re-in-prison-forever>], primary caretakers laws [<https://wpln.org/post/new-tennessee-law-offers-some-caregivers-alternatives-to-jail-time/>], mandatory minimums [<https://famm.org/wp-content/uploads/FS-MMs-in-a-Nutshell.pdf>]) that limit the judges and prosecutor's discretion.

Here is one example of how sentencing was restricted by mandatory minimum laws in Colorado.

In 2019, a truck driver's brakes failed on a highway in Colorado, resulting in the tragic deaths of four people. A jury found him guilty of the prosecutors' charges [<https://coloradosun.com/2021/12/20/colorado-minimum-sentencing-trucker-rogel-aguilera-mederos/>], and under Colorado law, those charges came with mandatory minimums that resulted in a 110-year sentence that the judge had no discretion to change.

This is another example from Florida where the mandatory minimum laws made a plea deal all the more appealing:

Marissa Alexander [<https://bcw.barnard.edu/videos/marissa-alexander-survived-and-punished/>], a Black woman and survivor of domestic violence, was convicted of aggravated assault in 2012 for firing a warning shot in the air in the midst of an attack from her

estranged husband, even despite a clear stand-your-ground defense. She was then sentenced to a twenty year mandatory minimum sentence. After mounting pressure due to outside grassroots organizing, Marissa's case was overturned.

She was then retried and threatened with charges that would come with a 60 year mandatory minimum sentence. Faced with that threat, she took a guilty plea to time served plus 65 more days in jail and two years of probation under house arrest.

There are also laws and guidelines (which are not binding) that require or suggest judges and prosecutors take into account a person's previous guilty convictions. The judge must take into account all of the statutory and regulatory limitations when they issue a sentence. This is all to say that judges have a lot of power in sentencing AND also there are structural elements (as decided by the state and federal legislatures in the creation of criminal law and procedure) that determine sentencing.

To understand better the kind of discretionary power a judge does have in sentencing for most cases, check out this podcast episode [<https://serialpodcast.org/season-three/2/transcript>] from Serial that focuses on sentencing hearings in one Judge's courtroom in Cleveland, Ohio.

KEY TAKEAWAYS

- Judges have a lot of power in sentencing and also there are structural elements (as decided by the state and federal legislatures in the creation of criminal law and procedure) that determine sentencing.

Source: https://beyondcourts.org/en/court_101/sentencing

A project of Community Justice Exchange [<https://www.communityjusticeexchange.org/>] and Interrupting Criminalization [<https://www.interruptingcriminalization.com/>]

Built by Research Action Design [<https://rad.cat>]