

## Chapter 1

# The Purposes of Sentencing

§ 1:1 Generally

§ 1:2 Three major purposes of sentencing

§ 1:3 The principles of evidence-based practice

**KeyCite®:** Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

### § 1:1 Generally

The purposes of sentencing have changed over the course of time, with different generations emphasizing one factor more than the other. When California subscribed to indeterminate sentencing, the purpose was to rehabilitate the offender. (*In re Lynch*, 8 Cal. 3d 410, 416, 105 Cal. Rptr. 217, 503 P.2d 921 (1972) (*Lynch*)). “[T]he theory of the Indeterminate Sentence Law in California is that it permits the *shortening* of a defendant’s sentence upon a showing of rehabilitation. This has not always been the reason invoked elsewhere for indeterminate sentence laws. When they first came into use—in certain countries of continental Europe in the 18th and 19th centuries—their purpose was the contrary, i.e., to permit the *lengthening* of sentences for the preventive detention of dangerous unrehabilitated criminals who had served their original terms. By the middle of the 19th century, however, such laws had generally disappeared. And when the indeterminate sentence system was revived by American prison reformers in the latter part of the century, its purpose was wholly ameliorative. The goal of its proponents was to individualize the rehabilitation process, and to use the power to shorten sentences as an incentive to reformation. (Sellin, Indeterminate Sentence, in 4 *Encyc.Soc.Sci.* pp. 650–651.)” (*Lynch* at p. 416 (emphasis in original).)

In the leading case of *Ex parte Lee*, 177 Cal. 690, 692, 171 P. 958 (1918), the California Supreme Court declared that the nature and purpose of the Indeterminate Sentence Law was to mitigate the punishment that would otherwise be

imposed upon the offender: “These laws place emphasis upon the reformation of the offender. They seek to make the punishment fit the criminal rather than the crime. They endeavor to put before the prisoner great incentive to well-doing in order that his will to do well should be strengthened and confirmed by the habit of well-doing.” The Legislature subscribed to the philosophy that the primary purpose of punishment in criminal cases was to reform the offender by making the punishment fit the criminal rather than the crime. (*In re Foss*, 10 Cal. 3d 910, 923, 112 Cal. Rptr. 649, 519 P.2d 1073 (1974) (disapproved of on other grounds by, *People v. White*, 16 Cal. 3d 791, 129 Cal. Rptr. 769, 549 P.2d 537 (1976)).)

That philosophy of penology was abandoned by the Legislature when, in 1976, it enacted a determinate sentencing scheme and declared the purpose of imprisonment to be punishment. (§ 1170(a)(1).) More specifically, section 1170(a)(1) provides: “The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.”

Next came a judicial edict. California Rules of Court, Rule 4.410, establishes the general objectives of sentencing. They include: protecting society, punishment, deterrence of the defendant and others by showing the result of committing crime, preventing the defendant from committing new crimes during the period of incarceration, securing victim restitution, and creating uniform sentences. The rules note that these objectives may “suggest inconsistent dispositions.” (Cal. Rules of Court, Rule 4.410(b).) As a result, a sentencing judge is directed to consider which objectives appear of primary importance in any particular case. In doing so, the “judge should be guided by statutory statements of policy, the criteria in these rules, and the facts and circumstances of the case.”

With the passage of Marcy’s Law, the electorate expressed a specified desire that certain offenses receive extra emphasis. The California Constitution was expressly amended as part of this comprehensive legislative initiative. The changes included several general statements regarding sentencing. People who “commit felonious acts causing injury

to innocent victims will be . . . sufficiently punished so that the public safety is protected and encouraged as a goal of the highest importance. (Art. I, sect. 28(a)(4).) It goes on to state that “[v]ictims of crime have a collectively shared right to expect that persons convicted of committed criminal acts are sufficiently punished in both the manner and the length of sentences imposed by the courts of the State of California.” (Art. I, sect. 28(a)(5); see also (a)(6).)

More recently, judges and other participants in the justice system have considered the application of evidence-based principles in sentencing of defendants, at least as to those persons the court contemplates keeping in the community on probation. In this context, there are a number of legitimate purposes of sentencing. It is left to the good judgment of the trial judge to weigh and balance these purposes when imposing a sentence on a particular defendant.

### § 1:2 Three major purposes of sentencing

There are three major purposes of sentencing:

A. *Accountability (“just deserts”)*: Every crime calls for a just, proportionate sentence that accounts for the seriousness of the crime, the extent of the defendant’s involvement, and the defendant’s criminal history. It is punishment. This aspect of sentencing primarily looks to the past: things that have already happened; things the defendant has done; things that cannot be changed; things that are “static.” The length of the sentence is not viewed in terms of reducing recidivism, but seeks to hold the defendant appropriately accountable for what he or she has done.

B. *Public Safety*: A variety of strategies are used to protect the public from future harm. Unlike accountability, public safety is based on what will happen in the future; we look forward to “dynamic” factors, things that change and can be changed. The ultimate goal is to reduce the risk of re-offending. There are four principle approaches:

1. *Rehabilitation*: Changing the defendant’s attitudes and behaviors from anti-social to pro-social by the use of accountability and treatment.

2. *Specific deterrence*: The particular punishment and treatment convinces the defendant that the price of crime is not worth the risk of the consequences.

3. *Incapacitation/control*: Custody will take the person away from society for an appropriate period of time, and reinforces accountability. Control of the defendant through such things as drug testing, electronic monitoring, and reporting to the probation officer, will stabilize and monitor the defendant’s behavior.

4. General deterrence: The punishment imposed on a particular defendant will demonstrate to the community how society will respond to this kind of behavior; it is “the message” in the sentence.

C. *Restitution/Restoration*: Recovery of loss to the victim and the eventual restoration of the community also are important goals of the criminal sentence.

### § 1:3 The principles of evidence-based practice

The principles of evidence-based practice, at least given the current reality of sentencing in California, have little value for the person being sent to prison. These concepts, however, hold a direct relationship to the person the court decides to place on probation. Once the decision is made to keep the defendant in the community, it should be everyone’s goal to help the defendant succeed on probation. Accordingly, while all purposes of sentencing are important and will have varying weight in any given sentence, evidence-based principles will play the biggest role in rehabilitation, specific deterrence, and incapacitation/control. (For a full discussion of evidence-based practices, see Section 4, *infra*.)

The Criminal Realignment Act added section 17.5(a)(2), which states that “[d]espite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average.” In subdivision (a)(3) the Legislature concludes the “[c]riminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.” Section 17.5 goes on to emphasize the importance of the many of these concepts of evidence-based sentencing principles.