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1) Who determines what punishment a convicted defendant receives?

Judges, not juries, almost always determine the punishment, even following jury trials. In fact, a common jury instruction warns jurors not to consider the question of punishment when deciding a defendant's guilt or innocence. In a very few situations, juries do take part in sentencing decisions. For example, in capital punishment cases in some states, a judge cannot impose the death penalty in a jury trial unless the jury recommends death rather than life in prison. And when a statute sets out factual circumstances that can produce a harsher sentence (for example, the use of a weapon in the commission of a crime), a judge cannot impose the harsher punishment unless the jury concludes beyond a reasonable doubt that the circumstances were present.

2) Where can the prescribed punishment for crimes be found?

Sometimes the law a defendant is charged with violating identifies the punishment. For example, a statute identifying specific behavior as a misdemeanor might go on to state, "For a first-time offense, an offender may be fined not more than \$1,000 or imprisoned for not more than six months, or both."

Other laws that define crimes might describe particular behavior as a misdemeanor or felony without specifying the punishment. In this situation, the punishment can be found in a separate statute that sets forth the punishment either for that particular misdemeanor (or felony), or, in some states, for all misdemeanors.

However, punishment often varies according to a defendant's background and the factual circumstances of a particular case. As a result, the actual sentence that a defendant receives if convicted may be less than the maximum term that a statute provides for. If you want to find out what your punishment is likely to be if you're convicted, you might take the following steps:

Pay a private defense attorney for an hour of consultation. An experienced defense attorney can often make accurate predictions as to likely punishment.

Talk to an attorney from the public defender's office.

Ask a relative or close friend who is a criminal defense attorney for informal,

unpaid advice.

3) Do people convicted of the same or similar crimes receive similar sentences?

Some state includes "mandatory sentences," which require judges to impose specific and identical sentences on all defendants who violate those laws. Mandatory sentencing laws are a response by state legislatures to their perception of the public's desire to end judicial leniency and treat alike all people who break the same law. Federal law used to prescribe mandatory sentences; these are now used more like guidelines.

More commonly, criminal statutes do not carry mandatory sentences. Rather, judges can take a number of factors into account when deciding on an appropriate punishment. For instance, judges may consider the defendant's past criminal record, age, and sophistication; the circumstances under which the crime was committed; and whether the defendant genuinely feels remorse. In short, mandatory sentence laws "fit the punishment to the crime," whereas judges prefer to "fit the punishment to the offender."

4) What factors do judges use in determining sentences?

If the judge has discretion to determine the sentence, the defense may bring to a judge's attention an infinite number of factual circumstances that may move the judge to impose a lighter sentence. The following are examples of such circumstances (called "mitigating" factors):

The offender has little or no history of criminal conduct.

The offender was an accessory to the crime (helped the main offender) but was not the main actor.

The offender committed the crime when under great personal stress; for example, he or she had lost a job, was late on rent, and had just been in a car wreck.

No one was hurt, and the crime was committed in a manner that was unlikely to have hurt anyone.

Just as mitigating circumstances can sway a judge to lessen a sentence, "aggravating" circumstances can compel a judge to "throw the book at" an offender. A previous record of the same type of offense is the most common aggravating factor. Other aggravating circumstances grow out of the way a crime was committed, as when an offender is

particularly cruel to a victim. Sometimes law themselves specify factors, such the use of a weapon.

5) Can my attorney ask for an alternative sentence?

Yes, lesser sentences can include suspended sentences, probation, restitution (victim compensation), and community service. Diversion programs, available to some defendants charged with misdemeanors involving drugs or alcohol, also may be available.

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