

# Examining Offense Classification Schemes

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# Agenda

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1. Walk through offense classifications in other states
2. Identify where New Mexico fits in the mix
3. Talk about the relationship between offense classification and sentencing

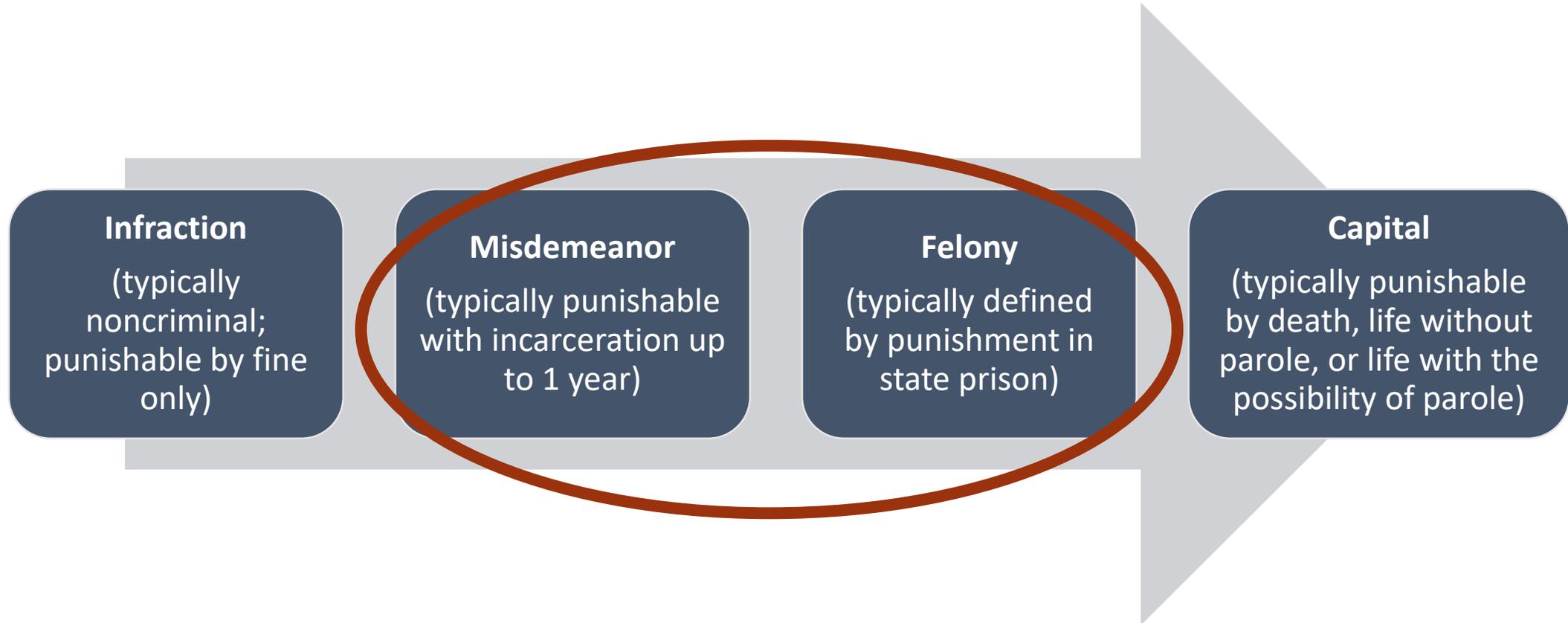
# Purpose of Offense Classification

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- Policy statement about the relative severity of different offenses
- Establishment of broad sentencing parameters

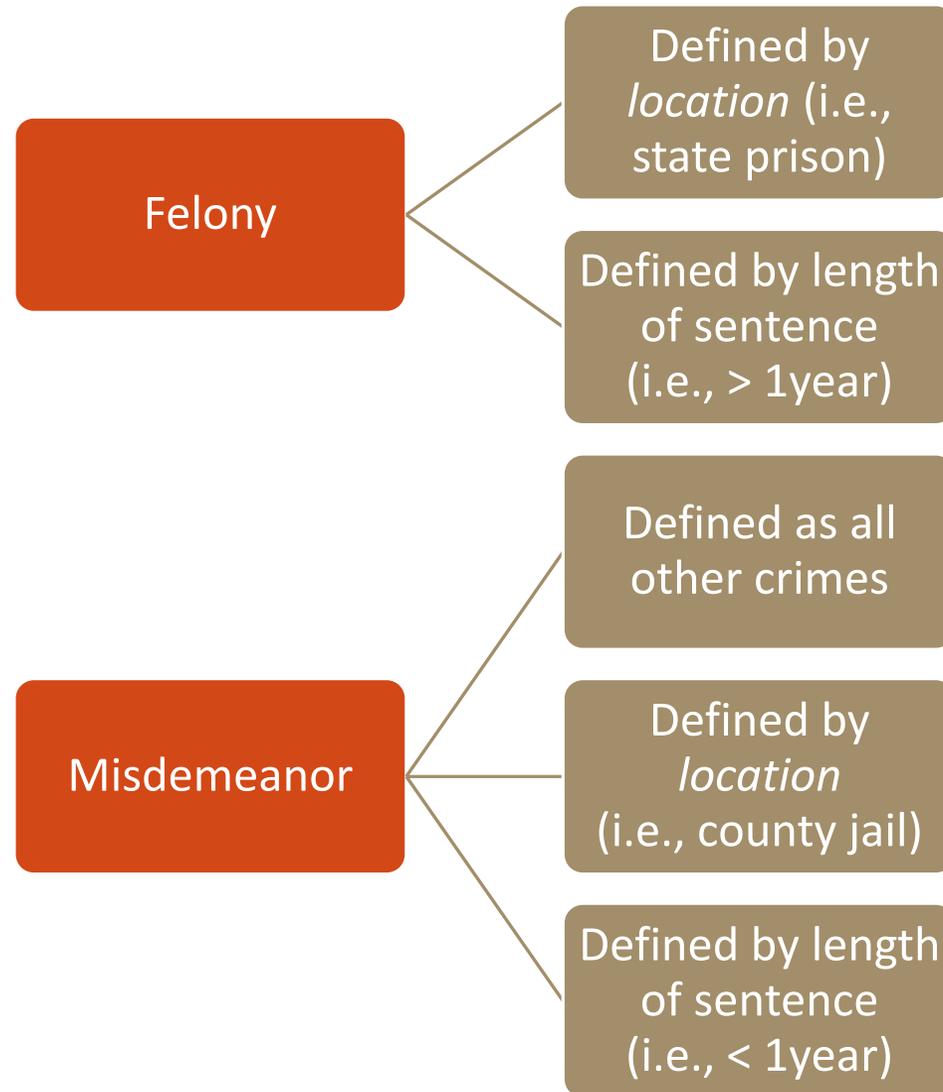
# Continuum for Offense Classification

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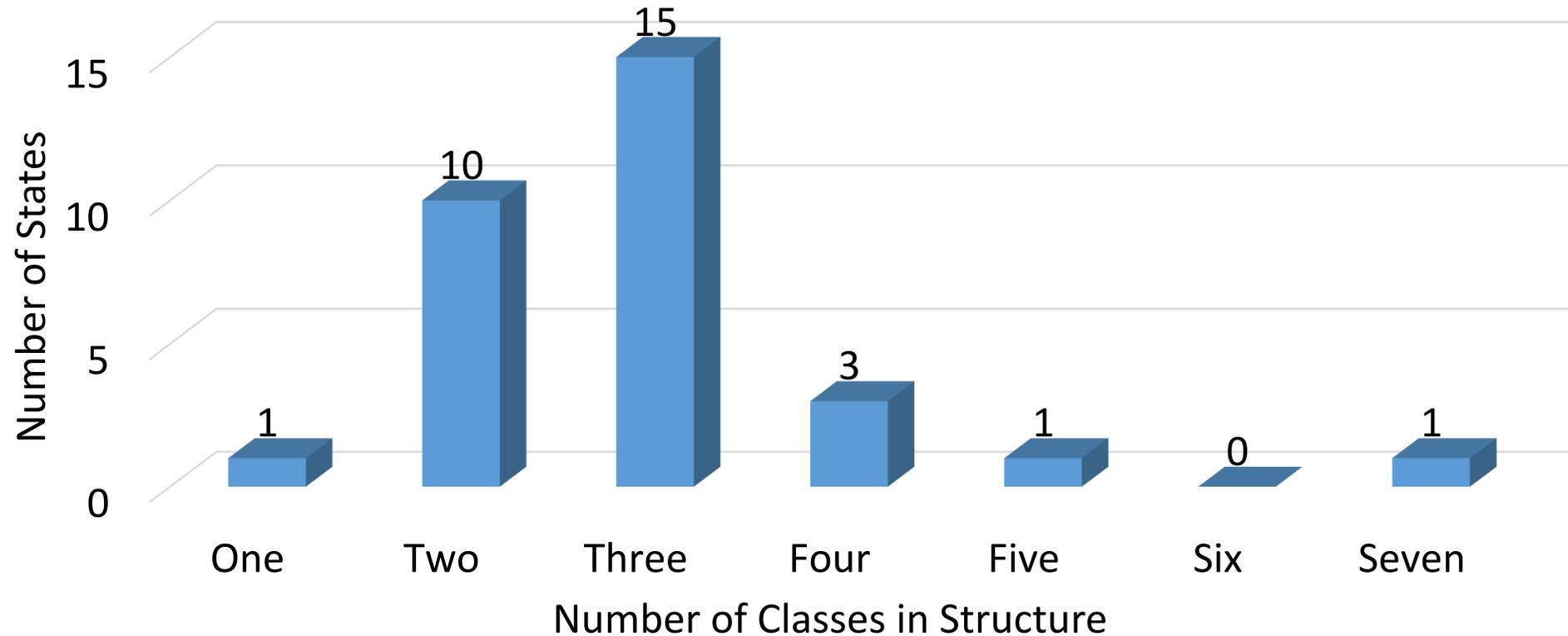
# Simple Structure

- 16 states have this structure
- These states often use other mechanisms to refine sentencing such as sentencing guidelines or structured sentencing laws



# Classification Structures for Misdemeanors

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# Classification Structures for Misdemeanors

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- There is wide variation across the states as to the maximum punishments available within each of the classification structures.
- Maximum penalties at the lowest classes vary from fines and probation to up to a year of incarceration while maximum penalties at the highest classes range all the way up to incarceration for up to five years.

## Most Common Penalties within Most Frequent Misdemeanor Classification Structures

	Three-Class Structure	Two-Class Structure
Class A	1 Year	1 Year
Class B	6 Months	30 or 90 Days
Class C	30 Days	

# Outlier Misdemeanor Structures

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Five Classes		Seven Classes	
	CO		NE
[A/1]	18 months	[A/1]	1 year
[B/2]	1 year	[B/2]	6 months
[C/3]	6 months	[C/3]	3 months
[D/4]	18 months*	[D/4]	7 days
[E/5]	1 year*	[E/5]	\$500 fine
		[F/6]	\$100 fine
		[G/7]	1 year**

\* Drug Misdemeanor

\*\*Misdemeanor DWI

# High Misdemeanors

- Only 5 states have misdemeanors punishable by more than a year

- The higher-level misdemeanors encompass a range of offenses including certain weapons offenses, prostitution, property crimes, careless driving, simple assault, and drug possession.

State	Type	Maximum Punishment
Colorado	Class 1	18 months
Iowa	Aggravated misdemeanor	2 years
Pennsylvania	First Degree	5 years
	Second Degree	2 years
South Carolina	Class A	3 years
	Class B	2 years
Vermont	All Misdemeanors	2 years

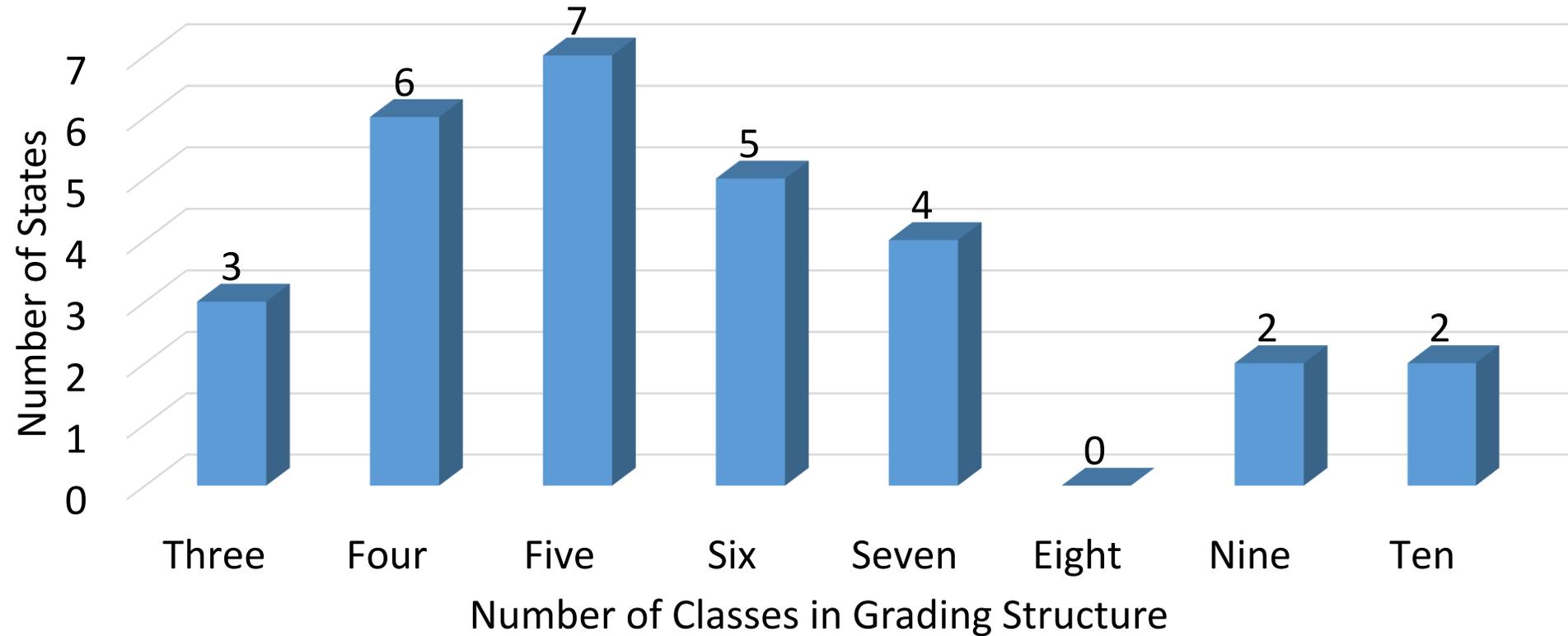
# Classification Structures for Felonies

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- There is more variation in classification structures for felonies
- Some states build capital felonies into the classification structure; others separate them out
- In order to facilitate comparison across states, we chose to code the penalty structure for the most serious offenses as “capital”
  - This allowed us to add a class on top of the current class structure in those states that did not already incorporate such offenses
  - In some states, our “capital” designation represents a class of crimes outside of the formal felony classification system, and in others, it represents a class of crimes that are already incorporated into the felony classification system
  - The net result of our coding method is to provide a comparative view into the total number of felony offense classes in each state

# Classification Structures for Felonies

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# Classification Structures for Felonies

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- There is wide variation in maximum penalties at each level
- States that have four classes have the most similar classification structures
- There's no similarly discernable pattern for the other class structures, except that those states with more classes generally have finer gradations of felony offenses

## Most Common Penalties for States with Four Felony Classes

Four-Class Structure	
Capital	Death, LWOP, Life
Class A	20 Years
Class B	10 years
Class C	5 years

# Classification Structures for Felonies

Five Classes							
	AL	FL	IL	KY	MO	NV	NY
<b>Capital</b>	Death; LWOP	Death; Life	Death; 60 years	Death; Life	Life	Death; Life	Life
<b>[A/1]</b>	Life	Life	15 years	50 years	15 years	20 years	25 years
<b>[B/2]</b>	20 years	Life	7 years	20 years	10 years	5 years	15 years
<b>[C/3]</b>	10 years	15 years	5 years	10 years	7 years	4 years	7 years
<b>[D/4]</b>	5 years	5 years	3 years	5 years	4 years	4 years	4 years
Six Classes							
	AR	CT	TN	TX	VA		
<b>Capital</b>	Death; LWOP	Death; LWOP	Death, LWOP, or Life	Death, LWOP, or Life	Life		
<b>[A/1]</b>	Life	Life	60	Death, LWOP, or Life	20 years		
<b>[B/2]</b>	20 years	40 years	30 years	Death; Life	20 years		
<b>[C/3]</b>	20 years	10 years	15 years	20 years	10 years		
<b>[D/4]</b>	10 years	5 years	12 years	10 years	10 years		
<b>[E/5]</b>	6 years	3 years	6 years	2 years	5 years		

# Classification Structures for Felonies

Nine Classes			Ten Classes			
	SD	WI		Capital	NE	CO
Capital	Death; Life	life			Death	Life
[A/1]	Life (mandatory)	60 years		[A/1]	Life	24 years
[B/2]	Life (optional)	40 years		[B/2]	life	12 years
[C/3]	50 years	25 years		[C/3]	50 years	6 years
[D/4]	25 years	15 years		[D/4]	50 years	3 years
[E/5]	15 years	12.5 years		[E/5]	50 years	1.5 years
[F/6]	10 years	10 years		[F/6]	20 years	32 years*
[G/7]	5 years	6 years		[G/7]	4 years	16 years*
[H/8]	2 years	3.5 years		[H/8]	3 years	6 years*
				[I/9]	2 years	2 years*

\*Denotes drug felony

Note: LWOP means life without parole.

# New Mexico's Simple Structure

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Petty Misdemeanor  
( $< 6$ mos)

Misdemeanor  
( $> 6$ mos to  $< 1$ year)

Felony  
 $> 1$ year

## Other Factors Suggest New Mexico is Mixed System

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- Felonies are subdivided into capital felonies and felonies of the first through fourth degrees
- Unlike the classification structures in other states, there are no maximum sentences stated in the definitions of these classes
- Instead, one must look to the sentencing provisions in state law to determine the appropriate penalties
- Misdemeanors are not further subdivided
- **CONCLUSION:** The presence of felony classes suggests that New Mexico is a mixed system

# Purpose of Offense Classification

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- Policy statement about the relative severity of different offenses
- Establishment of broad sentencing parameters

# Distribution of Sentencing Authority

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## Legislature

- Defines crimes
- Sets maximum penalties
- Dictates sentencing in certain cases (e.g. mandatory minimums)

## Intermediary

- Translates maximum penalties into usable guidelines or parameters for sentencing

## Judges

- Impose real-time sentences (with input from the parties and victims)

# Who is the Intermediary; What is their Function?

Intermediary	Method	Purpose
Legislature	Offense Classification	Relative offense severity <i>Broad</i> sentencing parameters
Legislature	Structured Sentencing	<i>Standard</i> sentencing parameters <ul style="list-style-type: none"> <li>• More focused than offense classification parameters</li> <li>• Length of sentences</li> </ul>
Sentencing Commission	Sentencing Guidelines	<i>Discrete</i> sentencing recommendations <ul style="list-style-type: none"> <li>• More individualized than standard sentencing parameters</li> <li>• Disposition (prison/probation)</li> <li>• Length of sentences</li> </ul>
Parole Board	Releasing Practices	Near instantaneous policy change

Rules for increasing/decreasing sentences

# Basic Sentences Show Some Disproportionality

	Basic Offense	Additional Facts				
		Resulting in death of a human	Resulting in death of a child	Resulting in exploitation of a child	Sexual offense against a child	Criminal aggravated sexual penetration
First Degree	18 years		Life			Life
Second Degree	9 years	15 years		12 years	15 years	
Third Degree	3 years	6 years		11 years	6 years	
Fourth Degree	1.5 years			10 years		

# Additional Sentencing Provisions Exacerbate the Disproportionality

## Habitual Offender Alteration to Basic Sentences

	No prior Criminal History	One Prior Felony Conviction	Two Prior Felony Convictions	Three Prior Felony Convictions
<b>Basic Second Degree Offense</b>	9 years	10 years	13 years	17 years
<b>Resulting in death of a human</b>	15 years	16 years	19 years	23 years
<b>Resulting in exploitation of a child</b>	12 years	13 years	16 years	20 years
<b>Sexual offense against a child</b>	15 years	16 years	19 years	23 years

# Initial Thoughts

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## Revise Criminal Code

- Revise crimes to include *all* of the elements of the offense
  - Type of harm (e.g., death)
  - Type of victim (e.g., child)

## Revise Felony Classifications

- Classify offenses based on relative severity
  - Crimes resulting in death should be at a higher class than crimes involving great bodily harm
  - Crimes involving child victims may be at a higher class than crimes involving adult victims

# Initial Thoughts

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## Revise Structured Sentencing Provisions

- Remove provisions that are based on additional offense elements (those will now be incorporated into the offense definitions)
- Identify circumstances when probation should be presumptive sentence and add rules around that