FACTSHEET: SENTENCING

Other nations protect public safety without imprisoning as large a percentage of their population, handle law-breaking behavior in ways less reliant on incarceration, and have different approaches to addressing complex social issues. This factsheet, derived from the longer report, Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations, considers the criminal justice policies of five nations, Australia, Canada, Finland, Germany and England and Wales, alongside those of the U.S.

Sentencing practices, especially length of sentence, are a significant factor when considering the number of people in prisons. Sentencing determines both placement (in a prison or not), and the term of imprisonment. Combined, these two factors can quickly drive up an incarceration rate.

The U.S. uses prison in response to offenses more often than comparison nations.

The United States sentences people to prison about twice as often as Canada, which in turn sentences people to a term of incarceration more than three times as often as any other of the comparison nations. Comparatively, England and Wales, Germany, and Finland use fines far
more often than any other response to an offense. Germany and Finland, in particular, use fines more than the U.S. uses a sentence of incarceration.²

The U.S. also uses “control of freedom” more often than any other nation, as well. This could include supervision in the community, or some other placement under the control of a correctional agency. The United States and Finland also appear to be the only nations in this comparison that sentence people to community service.

Germany and Finland use a special type of fine that is on a sliding scale, which creates accountability that takes into consideration ability to pay. These “day fines,” which were first developed and used in Finland in 1921,³ are based on the seriousness of the offense and apply proportional punishment to all people, regardless of socio-economic status.⁴ The fine is generally levied based on the amount of money a person earns on a given day and is then given over a period of days (e.g. a 20-day fine or a 10-day fine). In Germany, for example, punishments for certain crimes—mainly property crimes and assaults⁵—are assessed in these day fine units. Payment rates are high, but in the cases where payments are not made, community service is often a response; but sometimes, in Finland for example, a prison term of 90 days could be imposed. Recent concerns about the number of people going to prison for defaults led Finland to exclude non-payment of smaller fines from a prison penalty and to reduce the number of possible days spent in prison for default to 60 days.⁶

Regardless of the relatively low level of default, the fine system raises money that can be reinvested in social services that can prevent crime and reduce victimization, instead of generating significant costs for incarceration.⁷
Comparatively, many fines in the U.S. are applied regardless of whether or not a person can pay them; the penalty for not paying a fine in the U.S. is often incarceration.

**The U.S. sends people to prison longer for similar types of offenses**

U.S. research shows little to no correlation between time spent in prison and recidivism rates. In other words, a longer sentence does not necessarily reduce the chances that a person will commit an illegal offense again (unless a person is imprisoned until death). Yet, in addition to a more extensive reliance on incarceration in the United States, the U.S. also tends to give longer sentences, further serving to increase the U.S. incarceration rate.

The average sentence length for all sentences in the U.S. (63 months) is higher than that in Australia (36 months) and Germany (between one and two years). Differences in sentencing for drug offenses, in particular, likely contribute to this disparity in average sentences. People convicted of drug offenses in the U.S. receive an average sentence of five years compared to just 32 months in England and Wales. While data was not available by offense type for Germany, the U.S. sentences people to prison for longer than Finland, Australia or England and Wales for robbery, assault, and fraud.

When comparison nations do give a sentence of incarceration, the sentence is usually shorter than in the U.S. In the U.S., many believe that longer prison sentences remove people from the community so that they cannot engage in illegal behavior, and that the threat of severe punishment would deter this participation, thus protecting public safety. However, countries with lower prison populations and shorter prison sentences do not necessarily have higher rates of victimization or reported crime.

The lack of evidence that there is a measurable, consistent correlation between public safety and incarceration across comparison nations indicates that there is opportunity to consider that less incarceration and shorter sentences might yield similar public safety results without the expense or negative impact to people and communities.

**Policy Opportunities**

**Day fines (structured fines):** Based on the seriousness of the offense, day fines apply proportional punishment on all people, regardless of socio-economic status. The fine is generally levied based on the amount of money a person earns on a given day and are designed to hold a person accountable, but not to be so burdensome that they cannot realistically be paid. Officials that manage the day fines also frequently follow-up with people scheduled to pay them to determine if the financial situation has changed or if there are other barriers to payment. Responses for non-payment include community service, day reporting centers, home confinement, and half-way houses. Staten Island, New York, Maricopa County, Arizona, and Iowa have all implemented structured fine programs.

**Shorten sentences:** Shorter sentences of incarceration for all offenses would significantly reduce the number of people in prison without sacrificing public safety. A shorter amount of time in prison could be accompanied by community-based alternatives that are designed to facilitate reentry.
<table>
<thead>
<tr>
<th>Country</th>
<th>Sentencing Approach for Adults</th>
<th>Average Custodial Sentence Length</th>
<th>Alternatives to Incarceration</th>
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<tbody>
<tr>
<td>Australia</td>
<td>Territories have control over their own sentencing regimes but generally incarceration is used as a last resort, with fines and community service being commonly administered. Western Australia is the only territory to use mandatory minimum sentences for some nonviolent and non-sexual crimes. Some other territories have minimums in place for serious crimes.</td>
<td>36 months</td>
<td>Fines, community service, suspended sentence, probation, educational or rehabilitative programs, home detention.</td>
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<td>Canada</td>
<td>Sentences must be proportional to the seriousness of crime and responsibility of the person; minimum intervention approach followed; mandatory minimums used with restraint and mostly in the case of murder. Sentences of incarceration can also include a term of probation.</td>
<td>4 months</td>
<td>Fines, restitution, community service, suspended sentence, probation, intermittent imprisonment.</td>
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<tr>
<td>Finland</td>
<td>Sentences range from 14 days to 15 years (with multiple offenses), or life, during which time a portion of the sentence can be served on parole. Sentences must be proportional to seriousness of crime in question and responsibility of the offender.</td>
<td>10.1 months</td>
<td>Fines, suspended sentence, community service, no penalty.</td>
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<tr>
<td>Germany</td>
<td>Courts generally have a range of sentences to choose from; Imprisonment for minor offenses is discouraged; Mandatory minimums are in place for serious offenses.</td>
<td>6-12 months</td>
<td>Fines (Day Fine System), suspended sentence, diversion.</td>
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<td>England and Wales</td>
<td>Emphasis on fines and community service; incarceration only used in cases of serious crimes. Mandatory minimums applied to repeat offenders of specific crimes and very serious crimes.</td>
<td>13 months</td>
<td>Fines, community service, suspended sentence, probation (England and Wales).</td>
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<tr>
<td>United States</td>
<td>States have control over individual sentencing regimes with a general pattern of emphasis on retribution and incarceration. Mandatory minimum sentences applied to various offenses, including drug possession and gun possession. Sentences can include a term of probation that place limits on freedom.</td>
<td>63 months</td>
<td>Fines, community service, community substance abuse or mental health treatment, intermittent imprisonment, home detention, boot camps, suspended sentence.</td>
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</tbody>
</table>
Justice Policy Institute is a national nonprofit organization that changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. To read the full report, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, please visit www.justicepolicy.org.

7 According to the Public Safety Performance Project (*One in 100: Behind Bars in American 2008*), one year of incarceration costs on average $23,876.
10 These figures do not include sentences of life without parole, life plus additional years nor death.
16 These figures do not include sentences of life without parole, life plus additional years nor death.
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26 Donna Calverly, Youth Custody and Community Services in Canada, 2004/2005 (Ottawa, Canada: Juristat, Canadian Centre for Justice Statistics, 2007).

27 Includes 10 provinces and territories.

Life sentences recoded to 25 years for mean calculation.


In the case of custodial sentences of ninety days or less, the court can order that a sentence be served intermittently (non-consecutively). For example, a court may direct a person to serve prison time on weekends or certain days, while being under a probation order when not in custody.


31 Section 1 of the Conditional Sentences Act, as amended by Act 1989/992. Soon after the adoption of this amendment, the Supreme Court decided a case involving its application. In the case, the court had sentenced the defendant for attempted manslaughter to two years of imprisonment. He had been under 18 at the time of the offence. In view of the circumstances of the offence and the offender, the Supreme Court took the view that, despite the seriousness of the offence and the length of the sentence imposed, there were no “weighty reasons” for ordering the sentence imposed unconditionally (Supreme Court decision no. 1991:185, 20 December 1991).


33 Personal Communication with Tuomo Niskanen


It is possible for a defendant to be found guilty but nevertheless receive no penalty if the court is convinced that the person will change their behavior without a penalty.


37 Exact mean not available.

Jörg-Martin Jehle, Criminal Justice in Germany, 2009).

Diversion could include requirements for community service, reparations, training courses, apology to harmed parties, mediation, or fines depending on the seriousness of the crime.


The information presented applies only to England and Wales.


Lia Monahan, *Until They Die a Natural Death, 2009*.
