

Policy Statement

Policy Statement on Judicial Discretion and Mandatory Sentencing

Prepared by
Ohio Judicial Conference Criminal Law & Procedure Committee

With increasing frequency, members of the General Assembly are introducing legislation that proposes to limit judicial discretion by specifying the penalty courts must impose for specified offenses. Mandatory sentences have been proposed for a wide variety of offenses, ranging from OVI and other vehicular offenses to animal cruelty. The Ohio Judicial Conference has adopted the following policy as guidance to the General Assembly and to the Judicial Conference in reviewing future legislation regarding mandatory sentencing.

The Ohio Judicial Conference supports the proposition that the proper administration of justice requires that judges exercise discretion in all judicial proceedings, including criminal sentencing. The judicial process seeks to do that which is morally right, or just, in individual cases. If judges are to fulfill their constitutional duty to secure just results for the people of Ohio, judges need the flexibility to fashion appropriate sentences given the particular facts and circumstances of individual crimes.

Judges are uniquely positioned to advance the interests of justice in criminal sentencing. Judges have the legal training, and accumulate the experience necessary, to develop fair, impartial, and consistent sentencing patterns. Through their training and experience, judges develop the reasoning skills needed to weigh circumstances and make fair judgments. By repeatedly applying the law to diverse fact patterns, judges develop a keen sense of what is a fair and proportionate criminal sanction in individual cases. Inevitably, the experience judges acquire in criminal sentencing brings with it, too, unique insights into the consequences that particular sentences will have upon individual offenders, their victims, and the general public.

The Ohio Judicial Conference rejects the notion that justice can ever be achieved by a “one size fits all” approach to criminal sentencing. As United States Supreme Court Justice Benjamin Cardozo wrote in *The Growth of Law*: “Unique situations can never have their answers ready made. . . . Justice is not to be taken by storm. She is to be wooed by slow advances. Substitute statute for decision, and you shift the center of authority, but add no quota of inspired wisdom.”¹

Though justice cannot be systematically achieved unless judges are allowed to exercise discretion, the Ohio Judicial Conference also recognizes that justice can be achieved only if judges exercise that discretion with restraint. As United States Supreme Court Chief

¹ BENJAMIN CARDOZO, *THE GROWTH OF LAW* 133 (1924).

Justice Charles Evans Hughes once noted, the exercise of judicial discretion “implies conscientious judgment, not arbitrary action. It takes account of the law and the particular circumstances of the case and ‘is directed by the reason and conscience of the judge to a just result.’”²

The exercise of any governmental power – be it legislative, executive, or judicial in nature – necessarily involves the exercise of individual discretion. It is each judge’s responsibility to exercise discretion with appropriate restraint and judges recognize that they must be constantly vigilant in this regard. As Justice Cardozo observed nearly a century ago:

The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the “primordial necessity of the order in the social life.”³

Like members of the General Assembly, the Governor, and other public officials, judges take an oath pledging to exercise the powers conferred upon them in accordance with the law and in furtherance of the public good. Under our system of government, all public officials, including judges, are presumed willing and able to demonstrate self-restraint in fulfilling their constitutional duties.

Judicial restraint, however, is not solely the product of judges’ own powers of self-control. External forces also foster judicial restraint. Checks on judicial discretion are built into our judicial and political processes. Observe, for instance, how judicial decision-making is guided, principally, by the concept of *stare decisis* – the policy of courts to stand by precedent and to not disturb settled legal principles. The entire judicial process operates on the assumption that security and certainty in the law require that accepted legal principles be recognized and followed by judges. United States Supreme Court Justice Oliver Wendell Holmes described judges’ role relative to precedent as follows:

Their general duty is not to change, but to work out, the principles already sanctioned by the practice of the past. No one supposes that . . . [a judge] is at liberty to decide with sole reference even to his strongest convictions of policy and right. His duty in general is to develop the principles which he finds, with such consistency as he may be able to attain.⁴

Under our adversarial judicial process, prosecutors and defense attorneys each advocate for what are often countervailing public interests. Prosecutors, for instance, tend to focus

² *Burns v. United States*, 287 U.S. 216, 222-223 (1932).

³ BENJAMIN CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 140-141 (1921).

⁴ *Stack v. New York N.H. & H.R. Co.*, 58 N.E. 686, 687 (Mass. 1900).

on the incapacitation and deterrence function of criminal sentencing. Meanwhile, defense attorneys tend to focus their efforts on vindicating sentencing's rehabilitative function and guaranteeing proportionality in criminal sentencing. This adversarial process tends to result in criminal sentences that are fair and proportionate and that ultimately reconcile what are sometimes contradictory sentencing purposes. Mandatory sentences tend to undermine the proportionality and rationality in sentencing that the criminal justice system produces naturally. As the legislature has moved toward mandatory sentencing, the offenses identified for mandatory terms have been selected through a largely random process that is unguided by any comprehensive sentencing principle or policy. This has sometimes resulted in legislative proposals that would have comparatively less serious conduct carrying harsher penalties than more serious crimes.

And, of course, there is no judge, or any other public official for that matter, who is above the law. In exercising their constitutional authority, judges are guided by the Code of Judicial Conduct, which contains Canons the violation of which can result in sanctions that include removal from the bench in the most serious cases.

Lastly, the electoral process serves as the ultimate check against judicial abuses. In Ohio, voters have the power to remove any judge whom they believe lacks the capacity to exercise judicial power with appropriate restraint.

Mandatory sentences can have unintended practical consequences that are avoided when judicial discretion is preserved. Faced with a predetermined mandatory penalty with no leeway in the sentence, defendants often elect to take their cases to trial in lieu of pleading guilty. These proceedings not only tax criminal justice resources, they also can result in "not guilty" verdicts for defendants who did in fact commit the offense charged and who would have otherwise been willing to plead guilty. To avoid that result, prosecutors sometimes offer reduced charges in exchange for a guilty plea, a necessary practice that can sometimes result in manifest injustice.

Mandatory sentences also have broader fiscal implications that too often go unnoticed. Ohio prison populations continue to grow beyond our prisons' capacities. This places tremendous stress on the state's corrections system, challenging its efficiency, effectiveness, and security. It also diverts public resources from other important public purposes to incarceration. The cost of incarcerating offenders is so great and is such a burden on state and local resources that, from a fiscal perspective, it is imperative that this severe and expensive sanction be reserved for the most deserving offenders. Judges are best suited to make this determination on a case by case basis, thus preserving public safety while ensuring that public funds are not expended unnecessarily or unwisely.

Most importantly, the Ohio Judicial Conference supports judicial discretion because it is fundamental to our democratic system of government, which separates power among three co-equal branches of government and requires each branch to act as a check upon the other. Without discretion in sentencing, the judiciary cannot be said to be truly independent and without an independent judiciary we put at risk the fundamental system of checks and balances upon which our democracy is based. In *The Federalist* No. 51,

James Madison noted that securing against the gradual concentration of power in a single branch of government “consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the other.”⁵ When judges are reduced to the rote imposition of sentences that are predetermined by the Legislature and the Executive, the judiciary becomes nothing more than an arm of those other branches of government. Viewed in this way, constraining judicial discretion through mandatory sentencing is clearly antithetical to our system of checks and balances.

For the foregoing reasons, the Ohio Judicial Conference should resist any effort of the legislative or executive branches of government to limit judges’ discretion in criminal sentencing. Judicial discretion is necessary if judges are to achieve just results in individual cases. More fundamentally, judicial discretion is necessary for the judiciary to fulfill its constitutional role as a branch of government equal to, and independent of, the legislative and executive branches.

⁵ The Federalist No. 51 (James Madison).