

Examining Offense Classification Schemes

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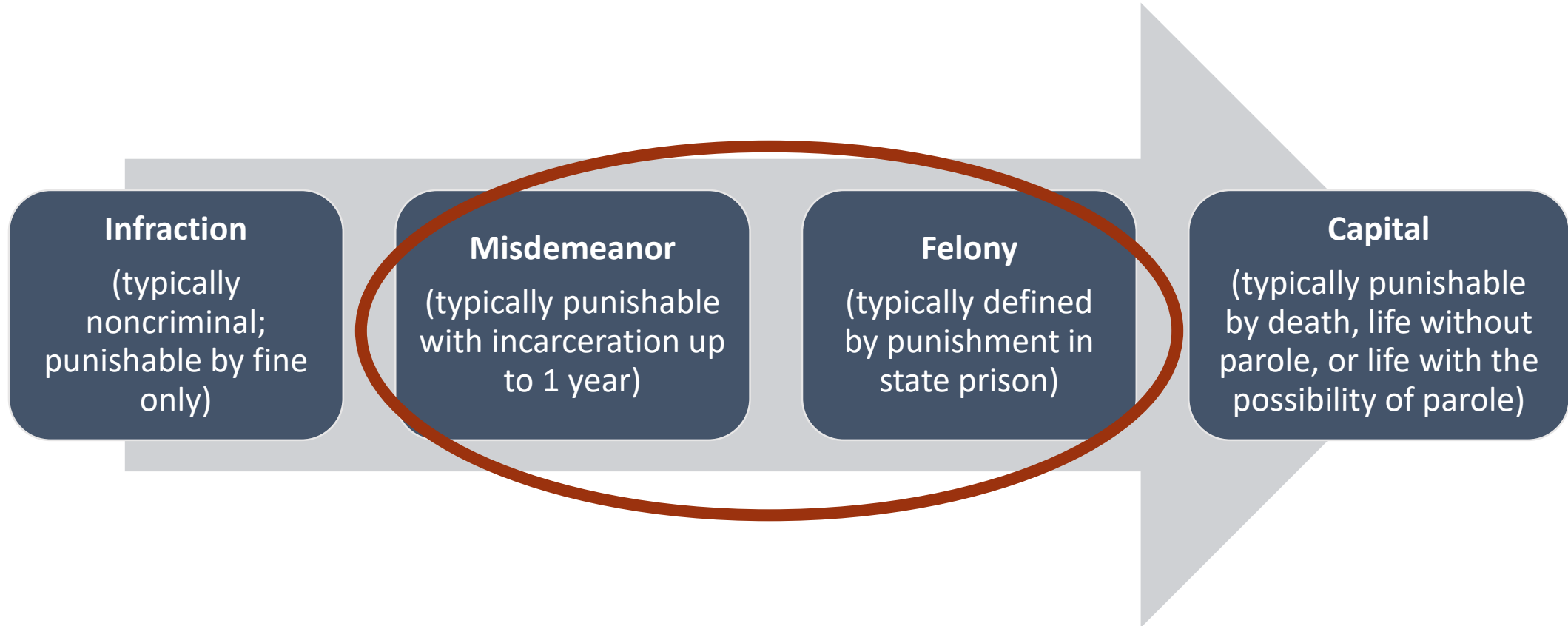
Agenda

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

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

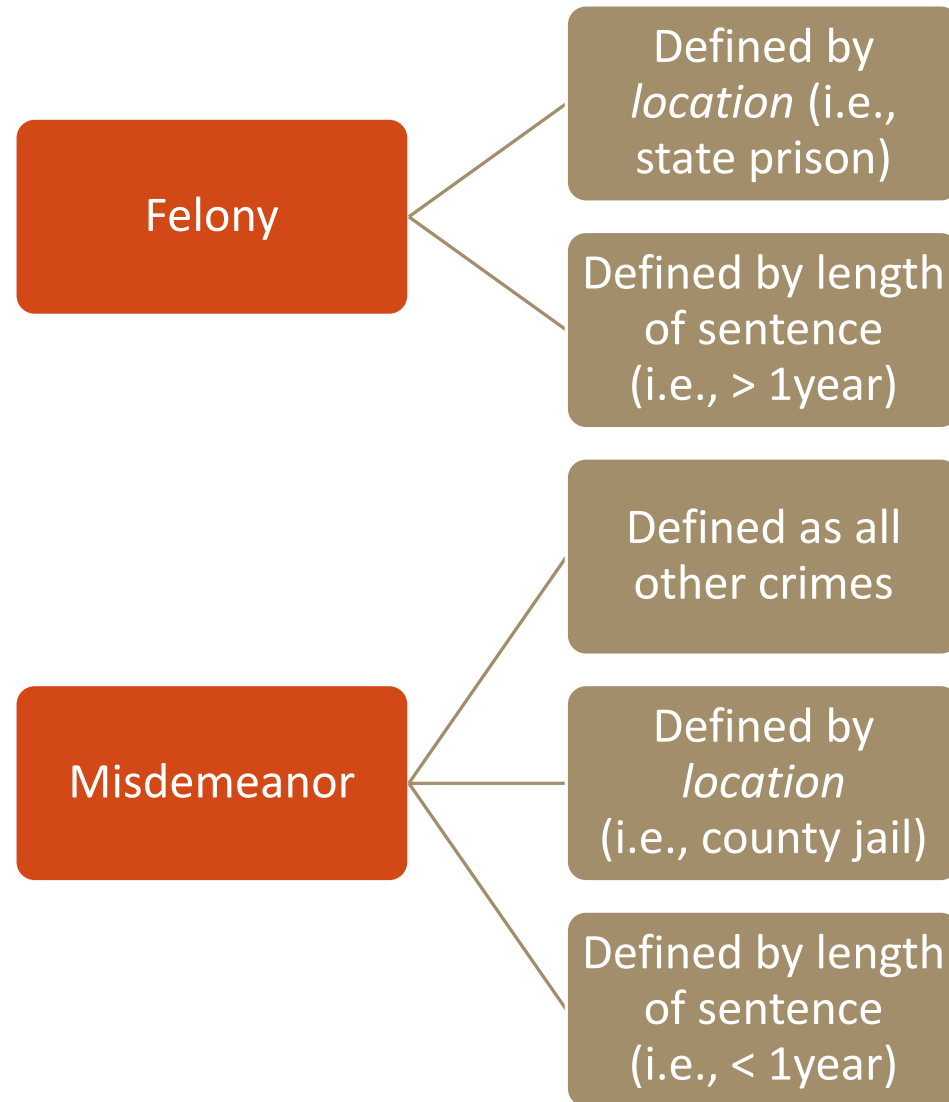
Continuum for Offense Classification





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



Classification Structures for Misdemeanors

- 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

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

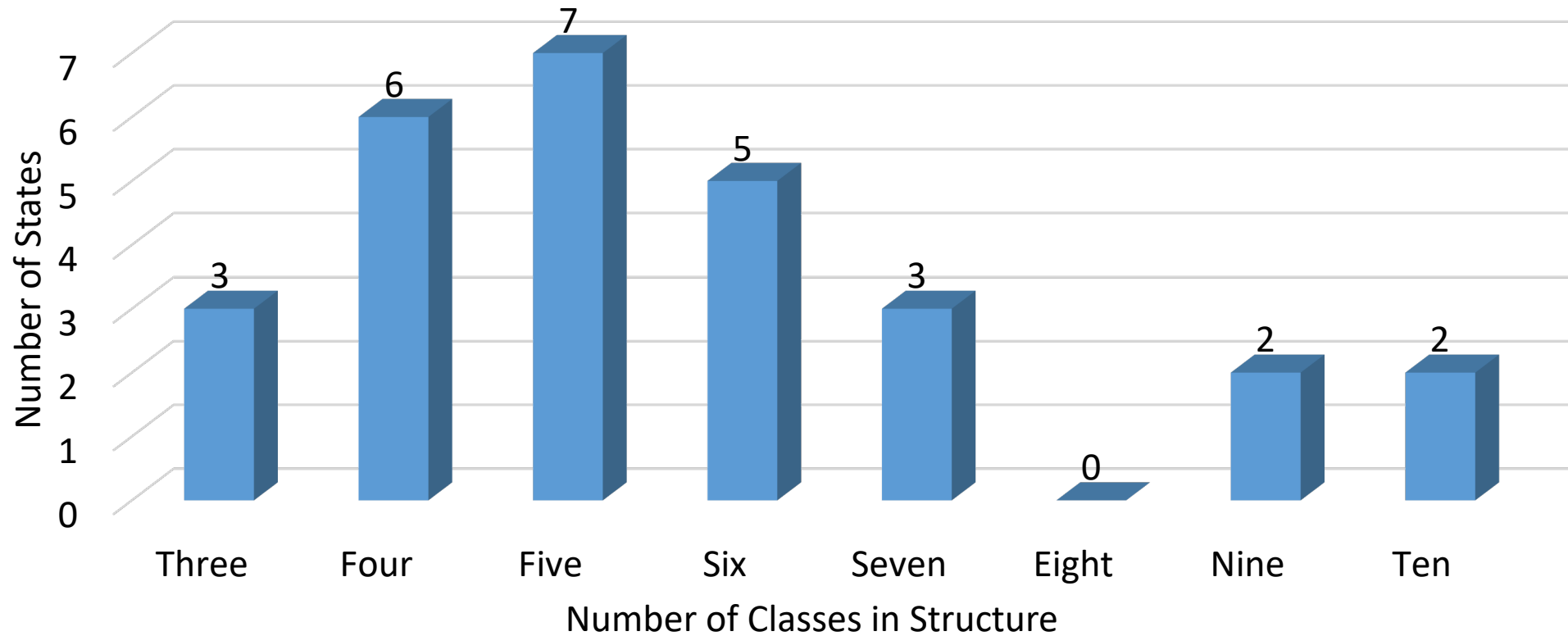
- The higher-level misdemeanors encompass a range of offenses including certain weapons offenses, prostitution, property crimes, careless driving, simple assault, and drug possession.

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

- 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



Classification Structures for Felonies

- 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
Capital	Death; LWOP	Death; Life	Death; 60 years	Death; Life	Life	Death; Life	Life
[A/1]	Life	Life	15 years	50 years	15 years	20 years	25 years
[B/2]	20 years	Life	7 years	20 years	10 years	5 years	15 years
[C/3]	10 years	15 years	5 years	10 years	7 years	4 years	7 years
[D/4]	5 years	5 years	3 years	5 years	4 years	4 years	4 years
Six Classes							
	AR	CT	TN	TX	VA		
Capital	Death; LWOP	Death; LWOP	Death, LWOP, or Life	Death, LWOP, or Life	Life		
[A/1]	Life	Life	60	Death, LWOP, or Life	20 years		
[B/2]	20 years	40 years	30 years	Death; Life	20 years		
[C/3]	20 years	10 years	15 years	20 years	10 years		
[D/4]	10 years	5 years	12 years	10 years	10 years		
[E/5]	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

Petty Misdemeanor
($< 6\text{mos}$)

Misdemeanor
($> 6\text{mos to } < 1\text{year}$)

Felony
 $> 1\text{year}$

Other Factors Suggest New Mexico is Mixed System

- 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

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

Distribution of Sentencing Authority

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"> • More focused than offense classification parameters • Length of sentences
Sentencing Commission	Sentencing Guidelines	<i>Discrete</i> sentencing recommendations <ul style="list-style-type: none"> • More individualized than standard sentencing parameters • Disposition (prison/probation) • Length of sentences
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
Basic Second Degree Offense	9 years	10 years	13 years	17 years
Resulting in death of a human	15 years	16 years	19 years	23 years
Resulting in exploitation of a child	12 years	13 years	16 years	20 years
Sexual offense against a child	15 years	16 years	19 years	23 years

Initial Thoughts

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

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 the presumptive sentence and add rules around that