

THE PENAL SYSTEM

MATERIALS

- 1) Four sets of Trivia Game Answer Cards – pieces of paper with the letters “A,” “B” and “C” written on them (attached at the end of this lesson).
- 2) Re-useable white board, markers, eraser – if you want one (provided in the PICC).

TAKEAWAYS

- Students will have thought about prisons and the role of the penal system in American society.

QUICK INTRO

(Time Check: 1 minute)

Tell the class: Your names, that you’re law students from Stanford Law School, and you’re there to teach a StreetLaw class.

- Remind the students about StreetLaw rules: don’t talk about the specifics of your case, respect your classmates and your teachers.

ICEBREAKER: Sketch of a Prison (5-10 min.)

Tell the students we want to begin by talking about prisons. Ask the students if they know what a prison is.

Prisons are adult correctional facilities which house people serving long sentences for serious crimes. They are different from juvenile lockup, camp or county jails.

NOTE: *Emphasize* that we are focusing on adult prisons, not juvenile detention today, so the answers to the following questions/the quiz should be about adult prisons (not juvenile facilities).

By a show of hands, how many people:

- Have seen a TV show or a movie about prisons?
- Have read a newspaper article about prisons?
- Have read a book about prisons?
- Have learned about prisons in school?
- Have seen a prison from the outside?
- Have been inside a prison?
- Know someone who has been to prison?
- Know someone who has been to prison more than once?
- Have talked to someone who has been in prison about their experience there?

Ask the students to use these sources of information to describe their *impressions* of what prisons are like. (*Teaching Tip* – Make sure the students know what “impression: means)

Write down their thoughts on the board.

Thank them for their participation.

ACTIVITY 1: Prison Trivia Game (5-10 min.)

Tell the students that now that we've discussed their impressions of prison life, we're going to test their knowledge of prison with a trivia game.

Split the class up into 2-4 groups. Give each group three pieces of paper with "A," "B" and "C" written on them. (Attached at the end of the lesson – you will have to cut/rip/fold them so that each letter is separate. Tell the students you're going to read them a series of multiple-choice questions, and each group is going to hold up the letter of the answer they think is best. (This means the group has to agree on the best answer).

On the board, write Teams 1, 2, 3 and 4 – the teachers should keep score, giving one point for each correct answer. If there are four teachers in the group, one teacher should read out the questions and the others teachers should hold up the possible responses (Vanna White-style) until the students make their selections. If there are fewer than 4 teachers, teachers can double up, holding one answer in each hand.

1) Which country has the most people in prison?

- A) China
- B) Russia
- C) U.S.

Answer: C. *As of 2009 the U.S. has about 2.3 million people in prisons and jails. China, which has four times the American population, ranks second with about 1.5 million prisoners. Only 0.89 million people are in prison in Russia. Over a quarter of the world's prisoners (9.8 million) are in the U.S.*¹

2) What percentage of people in prisons are not white?

- A) 40%
- B) 60%
- C) 80%

Answer: B. *As of December 31, 2010 about 39% of prisoners are black and about 23% are Hispanic.*² *Nearly 10% of black adults are in prison, jail or supervised release (parole or probation), compared to 4% of Hispanics and 2% of whites.*³

¹ See Roy Walmsley, *World Prisons Population List*, INT'L CENTRE FOR PRISON STUDIES (8th ed., 2009), available at: http://www.prisonstudies.org/info/downloads/wpp1-8th_41.pdf.

² See Bureau of Justice Statistics, *Prisoners in 2010*, U.S. DEP'T OF JUSTICE (Feb. 9, 2012), available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>.

³ See *One in 31: The Long Reach of American Corrections*, THE PEW CENTER ON THE STATES (Mar. 2009), available at: http://www.pewstates.org/uploadedFiles/PCS_Assets/2009/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

- 3) Most people in prison have:
- A) High School Degree
 - B) College Degree
 - C) Neither

Answer: C. Only 46% of American prisoners finished high school.⁴ If you are black and you drop out of high school, you have a 60% chance of ending up in prison by the time you are 35.⁵ Bottom line, if you finish high school, you're a lot less likely to spend time in prison.

- 4) The average Federal prison sentence for a drug crime is:
- A) 2 years
 - B) 6 years
 - C) 10 years

Answer: B. The mean Federal sentence for drug crimes is 82 months. The mean sentence for violent crimes is less than a year longer: 113 months.⁶

- 5) A person who has a felony drug conviction might never be eligible:
- A) To vote
 - B) For College Loans
 - C) For both

Answer: C.⁷ In California, however, convicted felons can vote after the end of their parole; probationers and people convicted of misdemeanors can vote.⁸ In other states, felony drug offenders can also lose right to welfare benefits, public housing and other services.

⁴ See Caroline Wolf Harlow, *Education and Correctional Populations*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE (Jan. 2003), available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/ecp.pdf>.

⁵ Becky Pettit and Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in the U.S. Incarceration*, 69 AMERICAN SOCIOLOGICAL REVIEW 151 (2004).

⁶ See Mark Motivans, *Federal Justice Statistics, 2009*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE (Dec. 2011), available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/fjs09.pdf>.

⁷ For example, in Virginia, Florida, Iowa, and Kentucky, those convicted of felonies may only receive their right to vote back through individual petition or an application to the governor. A full list of state laws can be found at *State Felony Voting Laws*, ProCon.org (Aug. 13, 2012, 12:40 PM), available at:

<http://felonvoting.procon.org/view.resource.php?resourceID=286>. In addition, a felony drug conviction disqualifies individuals from FAFSA eligibility.

⁸ See CAL. ELEC. CODE § 2201.

- 6) What percentage of prisoners say they've been sexually assaulted while in prison?
- A) 10-20%
 - B) 5-10%
 - C) 1-5%

Answer: A. Remind them that this means 1 in 5 to 10 prisoners CLAIM AND REPORT to have been the victim of rape or other sexual assault.⁹ (The actual number could be much higher)

- 7) Keeping someone in prison for one year costs:
- A) More than a Honda Civic
 - B) More than a Ford Explorer
 - C) More than a BMW Hybrid

Answer: A, B, and C. It costs the State of California an average of \$50,000 to keep someone locked up for a year.¹⁰ A 2013 Honda Civic costs \$26,305; A 2013 Ford Explorer costs \$40,720, and a 2013 BMW ActiveHybrid 3 costs \$49,300.¹¹

Tally up the points, and declare a winner. Collect the A, B and C cards from the students.

⁹ No accurate, static, national figure has been determined. The actual percentage varies widely depending on the time period considered and the individual study. See generally National Prison Rape Elimination Commission Report, NATIONAL PRISON RAPE ELIMINATION COMMISSION 37-43 (June 2009), available at: http://cybercemetery.unt.edu/archive/nprec/20090820155502/http://nprec.us/files/pdfs/NPREC_FinalReport.PDF (detailing various findings over the last ranging from 6%-22%, with a large number of studies within the 15%-20% range); see also Allen J. Beck & Candace Johnson, *National Former Prisoner Survey: Sexual Victimization Reported by Former State Prisoners, 2008*, U.S. DEP'T OF JUSTICE (May 2012), available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/svrfsp08.pdf> (9.6% for state prisoners).

¹⁰ See *The Price of Prisons: What Incarceration Costs Taxpayers*, VERA INSTITUTE OF JUSTICE (July 20, 2012), available at: http://www.vera.org/download?file=3542/Price%2520of%2520Prisons_updated%2520version_072512.pdf.

¹¹ See www.Motortrend.com (2013 Honda Civic (high-end) = \$26,305; 2013 Ford Explorer (high-end) = \$40,720; 2013 BMW ActiveHybrid 3 = \$49,300).

LECTURE/DISCUSSION (10 min.)

Keep the students in their groups. Write the word “Recidivist” on the board. Ask if any students know what the word means.

- Definition: A convicted criminal who commits another crime after he or she is released from custody.

Ask the Students what percentage of male criminals who are released from jail or prison will be convicted of another crime within three years? What about female prisoners?

Tell the class that 68% of men who are released from jail or prison will be arrested for another crime within three years; about 57% of women will be arrested for another crime.¹²

Ask the class why they think people commit other crimes after they get out of jail.

- Responses might include addiction, mental illness, peer pressure, poverty, family problems, gangs, or just for fun.

Tell the class that many people who convicted of crimes end up on parole or probation.

Ask the students what the difference is between probation and parole.

Explain the difference between the two conditions:

- **Probation** is ordered by a judge, usually in place of or in addition to jail time.
- **Parole** is ordered by a prison parole board, and allows an inmate to be released before the end of his or her sentence.
- Both probation and parole require certain conditions, like drug testing, regular visits with a probation/parole officer, and the loss of 4th Amendment search protections. Probation often includes a *suspended sentence* or “hammer,” which means that any probation violation can result in the imposition of a harsh sentence for the original crime.

Ask students how they think life is different for people who are on parole or probation than it is for people who are not under state supervision.

- Responses might include stigma in the community, the annoyance of having to check in regularly with a P.O., the loss of privacy, the fear that even a minor violation can land the probationer back in jail.
- Tell the class that 46.9% of people released from prison will be arrested *and convicted* of another crime within 3 years of release.¹³
- Ask students how they think the experience of being on probation or parole affects the likelihood that someone will reoffend.

¹² You can also generate all types of statistics using the Bureau of Justice Statistics (BJS) “analysis” tab at: <http://bjs.ojp.usdoj.gov/index.cfm?ty=datool&surl=/recidivism/index.cfm#>. Try it out for your students and bring in some interesting information! (You can select and calculate recidivism statistics by age range, time served, type of offense, etc. For example, those under 21 are even more prone to recidivism – 79.9% were rearrested for a new crime within 3 years); see also Patrick A. Langan & David J. Levin, *Recidivism of Prisoners Released in 1994*, BUREAU OF JUSTICE STATISTICS (June 2002), available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>.

¹³ See Langan & Levin, *supra* note 12 at 1.

Ask the students why they think people reoffend.

Tell the class that some people think that one of the reasons so many people reoffend is that the penal system is not doing the right things while people are incarcerated.

Ask the students what they think the criminal system is supposed to do.

Explain that there are 4 main things the criminal justice system is supposed to do. Write them on the board:

- Deter (ex-ante scaring people from committing crimes in the first place)
- Punish (ex-post eye for an eye idea)
- Incapacitate (removing people who commit crimes from the streets)
- Rehabilitate (helping people become more productive members of society)

Make sure the students understand what each term means, using the parenthetical descriptions or other examples.

Ask the students if they can think of any examples of the way in which the purposes are being served by the facility that they are in.

- Students may be very critical of their programs, or note that the focus seems to be primarily on punishment rather than rehabilitation (it gets a lot worse in adult facilities; the CA juvenile system spends a significantly higher percentage on “rehab” programs like school and counseling than the adult system). The point here is to get them to see that there is *a purpose* behind the program, even if it’s an unproductive or undesirable one.

ACTIVITY 2: BRAINSTORM – A Better Penal System? (10-15 min.)

Break the class back into groups. At least one teacher should work with each group to answer the following questions:

- Which of the purposes is most important for the penal system to serve?
- If we were designing a new penal system, what changes would we make?
- How would those changes further the purposes we think are important?

Examples might include:

- Deterrence: Community outreach by ex-cons talking about their experiences, Tougher sentences, Well-publicized convictions, Death Penalty, Torture
- Punishment: More sentencing discretion (judges decide who really needs punishing)
- Incapacitation: Non-custody sentences for non-violent offenders
- Rehabilitation: Counseling, Drug Treatment, Restorative Justice Courts (convicts have to confront victims for apologies, discussion and forgiveness), In-Custody Job Training, In-Custody Education, Post-Release Job and School Placements

After a few minutes, bring the class back together and ask each group to present two proposals (that haven’t been suggested by another group) and explain how the proposal would make the penal system work better.

CONCLUSION
(Time Check: 2 minutes)

1. Thank the students for their good insights and participation.
2. Summarize the Activities:
 - a. This week, we talked about the Penal System in the United States and some problems with it.
 - b. We also talked about how the Penal System might be reformed to better achieve its outcomes.

A

B

C