

## 1.5: The Purposes of Punishment

### Learning Objective

- Ascertain the effects of specific and general deterrence, incapacitation, rehabilitation, retribution, and restitution.

Punishment has five recognized purposes: *deterrence*, *incapacitation*, *rehabilitation*, *retribution*, and *restitution*.

### Specific and General Deterrence

Deterrence prevents future crime by frightening the *defendant* or the *public*. The two types of deterrence are **specific** and **general deterrence**. Specific deterrence applies to an *individual defendant*. When the government punishes an individual defendant, he or she is theoretically less likely to commit another crime because of fear of another similar or worse punishment. General deterrence applies to the *public* at large. When the public learns of an individual defendant's punishment, the public is theoretically less likely to commit a crime because of fear of the punishment the defendant experienced. When the public learns, for example, that an individual defendant was severely punished by a sentence of life in prison or the death penalty, this knowledge can inspire a deep fear of criminal prosecution.

### Incapacitation

**Incapacitation** prevents future crime by removing the defendant from society. Examples of incapacitation are incarceration, house arrest, or execution pursuant to the death penalty.

### Rehabilitation

**Rehabilitation** prevents future crime by altering a defendant's behavior. Examples of rehabilitation include educational and vocational programs, treatment center placement, and counseling. The court can combine rehabilitation with incarceration or with probation or parole. In some states, for example, nonviolent drug offenders must participate in rehabilitation in combination with probation, rather than submitting to incarceration. [Ariz. Rev. Stat. §13-901.01](#). This lightens the load on jails and prisons while lowering **recidivism**, which means reoffending.

### Retribution

**Retribution** prevents future crime by removing the desire for *personal* avengement (in the form of assault, battery, and criminal homicide, for example) against the defendant. When victims or society discover that the defendant has been adequately punished for a crime, they achieve a certain satisfaction that our criminal procedure is working effectively, which enhances faith in law enforcement and our government.

### Restitution

**Restitution** prevents future crime by punishing the defendant *financially*. Restitution is when the court orders the criminal defendant to pay the victim for any harm and resembles a civil litigation damages award. Restitution can be for physical injuries, loss of property or money, and rarely, emotional distress. It can also be a *fine* that covers some of the costs of criminal prosecution and punishment.

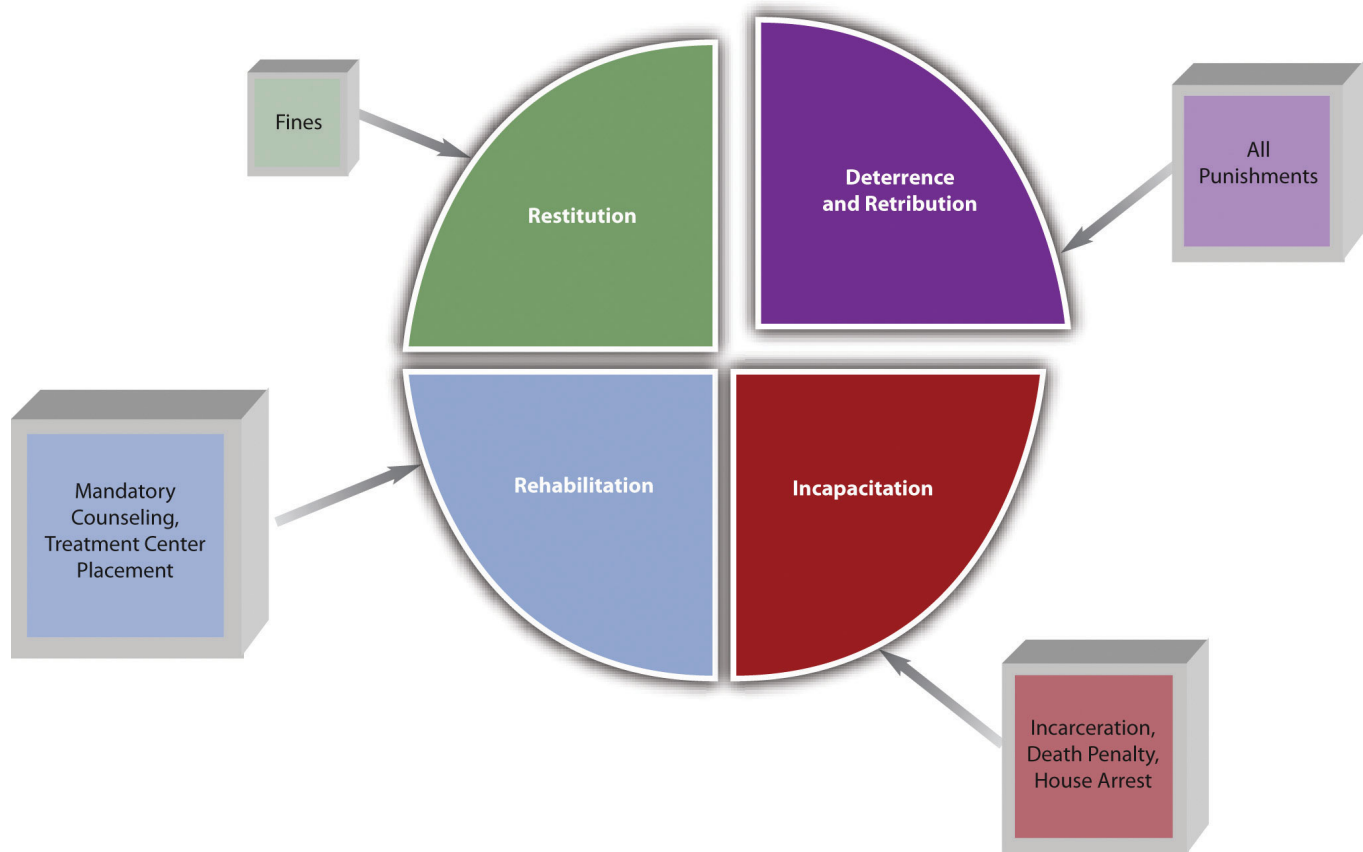


Figure 1.5 Different Punishments and Their Purpose

## Key Takeaways

- Specific deterrence prevents crime by frightening an individual defendant with punishment. General deterrence prevents crime by frightening the public with the punishment of an individual defendant.
- Incapacitation prevents crime by removing a defendant from society.
- Rehabilitation prevents crime by altering a defendant's behavior.
- Retribution prevents crime by giving victims or society a feeling of avengement.
- Restitution prevents crime by punishing the defendant financially.

## Exercises

### ? Exercise 1.5.1

What is one difference between criminal victims' restitution and civil damages?

#### Answer

The court awards criminal restitution to the victim after a state or federal prosecutor is successful in a criminal trial. Thus the victim receives the restitution award *without paying* for a private attorney. A plaintiff that receives damages has to pay a private attorney to win the civil litigation matter.

### ? Exercise 1.5.2

Read [Campbell v. State](#), 5 S.W.3d 693 (1999). Why did the defendant claim that the restitution award was too high? Did the Texas Court of Criminal Appeals agree with the defendant's claim?

#### Answer

In *Campbell*, the defendant entered a plea agreement specifying that he had committed theft in an amount *under* \$100,000. The trial court determined that the defendant had *actually* stolen \$100,000 and awarded restitution of \$100,000 to various victims. The defendant claimed that this amount was excessive because it exceeded the parameters of the theft statute he was convicted of violating. The Texas Court of Criminal Appeals *disagreed* and held that the discretion of how much restitution to award belongs to the judge. As long as the judge properly ascertained this amount based on the facts, restitution could exceed the amount specified in the criminal statute the defendant was convicted of violating.

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