

Criminal Sentencing : Understanding the Parole Process and the Impact on Tribal Justice Systems



Tribal Judicial Institute
UND School of Law



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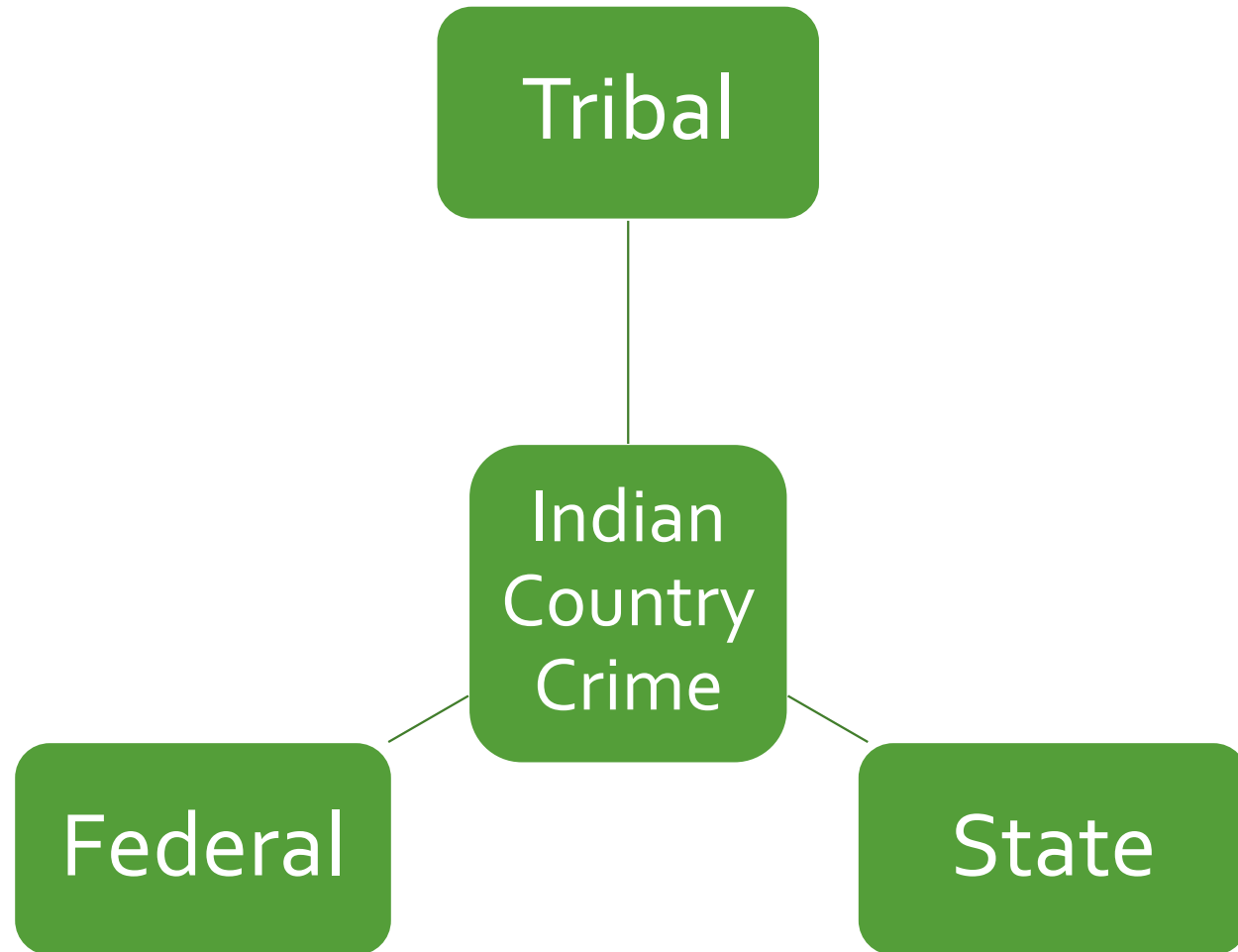
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Overview

- Highlight Tribal court sentencing provisions under the Indian Civil Rights Act (ICRA)
- Provide information on what parole is and how it differs from probation
- Highlight intersections between parole boards, reentry planners and probation departments
- Introduce federal, state and Tribal parole procedures
- Provide examples of Tribal parole programs and laws



Adjudication of Crimes Arising in Indian Country



Tribal Court
Sentencing
Provisions Under
The Indian Civil
Rights Act (ICRA)

1302(a)(7)(B)

(a) IN GENERAL.—No Indian tribe in exercising powers of self-government shall—

(7)(B) ... impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both



Tribal Law and Order Enhanced Sentencing Authority Under The Indian Civil Rights Act (ICRA)

1302(b)

- (b) OFFENSES SUBJECT TO GREATER THAN 1-YEAR IMPRISONMENT OR A FINE GREATER THAN \$5,000.

—A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States. 25 U.S.C. 1302 (b)



Where Individuals May Be Incarcerated for Enhanced Sentences

See 25 USC 1302 (d)

Enhanced sentences may be served by individuals

- in a Tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration
- in the nearest appropriate federal facility (United States will cover costs pursuant to the Bureau of Prisons Tribal prisoner pilot)
- in a State or local government-approved detention or correctional center pursuant to an agreement between the Tribe and the state or local government
- in an alternative rehabilitation center of a Tribe



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Impact of Sentences

Does the Location of the Detention Facility Impact Post-sentence Options?

- Individuals may be incarcerated pursuant to Tribal court orders, federal court orders or state court orders
- Sentencing reviews or modification and parole options may vary depending upon the laws of the jurisdiction that adjudicated the case regardless of the facility where the term of incarceration is actually served



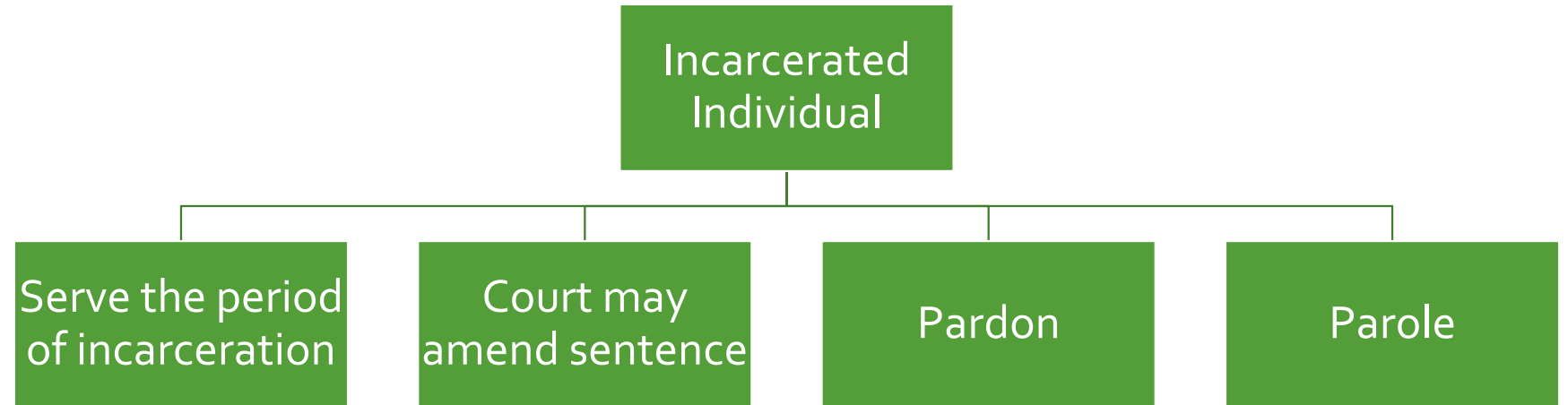
Impact of Longer Terms of Incarceration

With longer jail sentences, Tribes may also consider amending laws to provide post-sentencing options to review terms of incarceration in criminal cases

The reason for review may be to support reintegration of individuals into the community, reduce costs of detention to Tribes or other factors of importance to the Tribe



How Might An Individual Sentenced to Incarceration Reenter the Community?



Community Corrections

- Community corrections involve the supervision of individuals and provision of services to individuals while they are in the community thereby providing alternatives to incarceration
 - Parole, Reentry and Probation are all forms of community corrections
- **Parole** is a conditional release from jail permitted before an individual completes their full sentence
- **Reentry** is a critical part of community corrections as it supports the reintegration of individuals into the community after periods of incarceration.
- **Probation** is a court-ordered sentence where an individual completes a sentence in the community under supervision



What is the Purpose of Parole?

By focusing on rehabilitation and accountability, parole aims to reduce recidivism and promote safer communities.



Parole reduces recidivism by ensuring accountability through ongoing supervision and wraparound services to support re-entry.



This in turn reduces jail overcrowding and reduces costs associated with ongoing incarceration.



Differences between Parole and Probation

Parole

- Early release from jail granted after serving part of a sentence
- Allows community supervision after part of jail term is served
- Terms and conditions usually set by parole board or commission

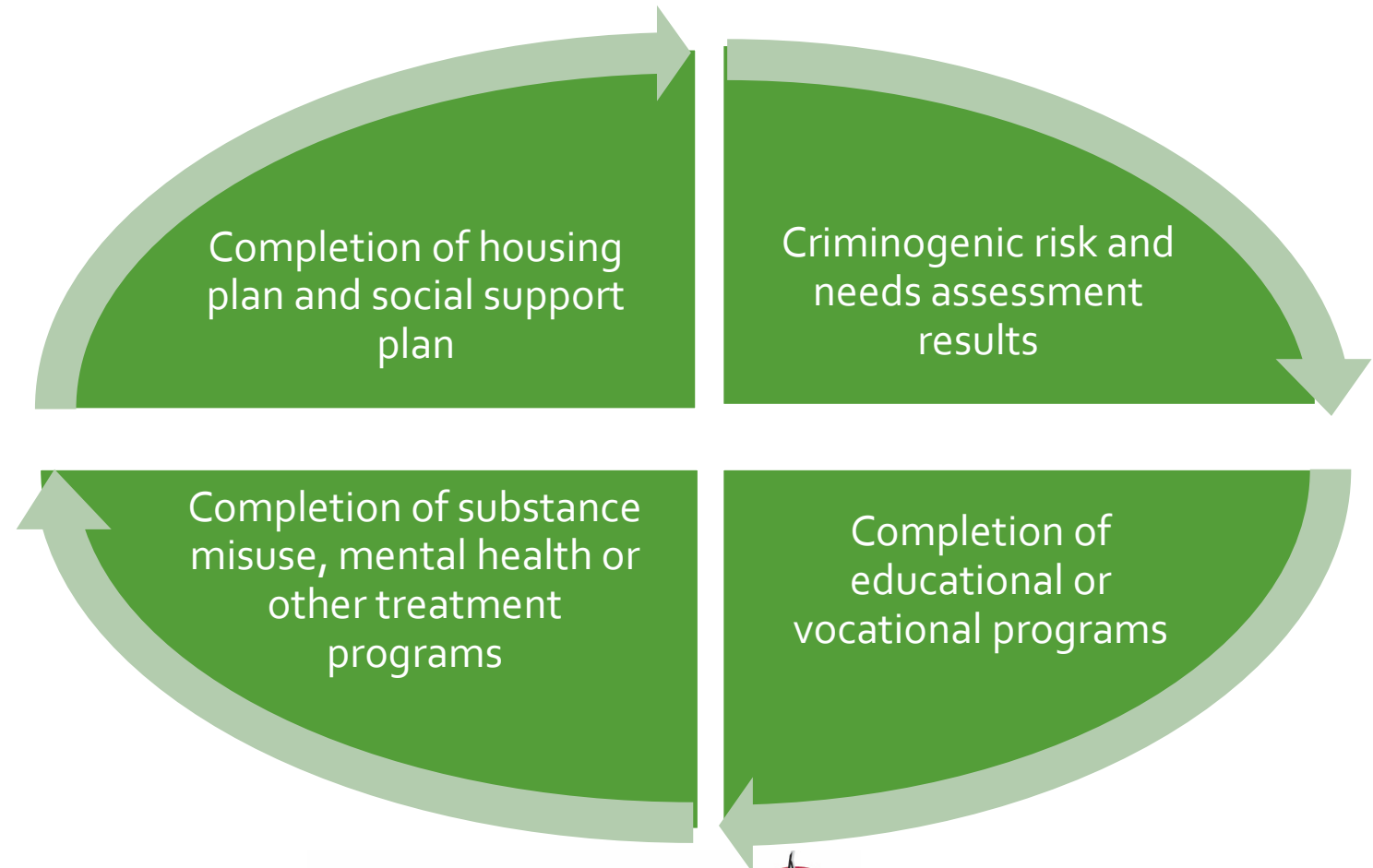
Probation

- A part of the sentence imposed by the court
- Allows community supervision in lieu of jail term
- Terms and conditions of probation set by the court



Parole and Reentry

- Reentry planners may intersect with parole boards by providing case plans and gathering information to present to the parole board such as:



Parole and Probation

Parole boards serve the function of deciding whether to release an individual from incarceration with specific conditions

Upon release, individuals who are granted parole are often supervised by probation officers although some jurisdictions may have designated parole officers

- Individuals on parole may be subject to regular home, job and employment checks as well as drug screening and other conditions
- Through regular supervision and the provision of services that address individual needs the likelihood of violating parole is reduced by addressing criminogenic needs

Parole violations are generally reported to the parole board and may result in a revocation of parole whereas probation violations are generally reported to the court



Understanding the Parole Process

Federal, State and Tribal

The Parole Process: Federal

- Federal inmates convicted after November 1, 1987, are not eligible for parole under federal system due to the Sentencing Reform Act of 1984
 - U.S. Parole Commission continues to exist and may grant parole to eligible inmates
- Other early release options exist through the First Step Act 2018 which allows for:
 - good time credit
 - transitioning inmates to halfway houses or home confinement
 - qualifying terminal medical condition
 - compassionate release for those over 65 years of age



The Parole Process: State

- Procedures may vary somewhat from state to state
- States will have a designated parole board
- Application for parole is made by an individual to a state parole board once they become eligible to do so under state law
- State laws will dictate factors that the designated parole board can consider, the process for hearings, and decisions regarding conditions of release
- States generally do not notify Tribes of parole decisions however notifications may occur for sex offenders, when there is a state-tribal agreement, or if there is a federal mandate
- State parolees report to the state's established probation office



Common factors considered by parole board

- Nature and severity of the crime
- Risk of safety to the community and/or victim
- Victim input
- Individual remorse
- Institutional behavior
- Rehabilitation efforts
- Mental and physical health

Ultimately factors considered will help the parole board to determine whether the individual has been sufficiently rehabilitated and whether the individual would pose a threat to the community if released

The Parole Process: Tribal

- Applies if Tribal law establishes a forum for parole decisions to be made, provides factors to be considered, and sets forth a process
- Tribal parole would apply when an individual is subject to incarceration based upon a sentencing order issued by a Tribal Court
 - True even if the individual is incarcerated in a non-Tribal detention facility, parole would be subject to Tribal law if Tribal law permits
 - Worthy of consideration particularly in enhanced sentencing cases
- Tribes may also collaborate to provide community supervision of individuals who have been granted parole by state jurisdictions



Tribal approaches to parole

Through collaborations with states due to incarceration of Tribal members in state system

Through the development of Tribal laws to support community corrections and incorporate parole provisions



Collaborative Example from the Field: Sisseton- Wahpeton Oyate

- Sisseton-Wahpeton Oyate entered an intergovernmental agreement with the state of South Dakota in 2014
- Established Tribal Parole Pilot to improve compliance with parole conditions, reduce the number of parolees returning to prison, and improve community safety
- Supported the establishment of Tribal Parole Office to manage a caseload of Tribal members who were being released on parole from a South Dakota State Corrections facility



Example from the Field: Shoshone- Bannock Tribes of the Fort Hall Reservation

- *Parole* means the conditional release from prison of a person who has served part of his sentence in an institution.
- *Note: although the Tribe has defined parole within the Tribal Code there is no defined process for parole. Section 5, Chapter 12 of the Code does apply to Probation and enables the Tribal probation department to supervise individuals who have been granted parole (see 5-12-1 (C)(1))*

Example from the Field: Turtle Mountain Band of Chippewa

26.07.010 Eligibility of Parole

- Any person confined to jail who shall have served, without misconduct, one- half of the sentence imposed, shall be eligible to be considered for parole, upon written application to the Court. Parole will be considered, upon written request from the prisoner requesting consideration. The Tribal Court shall review the prisoner's criminal history and speak with the Prosecutor's Office and the Correctional Department for their opinions before making a decision.

26.07.020 Granting Parole

- Parole may be granted by the Tribal Court with conditional release requirements as the Tribal Court may prescribe including the requirement of personal reports from the parolee.



Example from the Field: White Mountain Apache Tribe

Rule 7.3 of the White Mountain Apache Rules of Criminal Procedure.

- The Parole Board of the White Mountain Apache Tribe shall hear and adjudicate all post sentencing motions of inmates sentenced by the White Mountain Apache Tribal Court.
- Motions to be heard by the Parole Board include , but are not limited to, the following: early release; release on completion of 2/3 of sentence; suspension of sentence; and temporary release.
- The Parole Board shall consist of the DOC Director, DOC Supervisor, and a detention officer appointed by the Director and Supervisor.

Example from the Field: White Mountain Apache Tribe cont'd

- At a Parole Board Meeting, the Parole Board may decide inmate motions without a hearing if there are no written opposition to the inmate's motion, releasing the inmate does not violate Tribal Law, or if the inmate has no infractions, lock downs, or other disciplinary actions while incarcerated.
- At a Parole Hearing, the Parole Board shall review and consider the inmate's motions as well as the comments from interested parties as outlined in section 9 below.
- Two (2) of the three (3) members of the Parole Board shall agree on a decision when deciding inmate motions.

Final Points

Tribes may want to include a parole process within their Tribal justice system

When doing so Tribes may want to consider whether laws will:

- Enable Tribal probation officers to supervise parolees from other jurisdictions
- Establish a forum, process and eligibility criteria for parole when individuals are incarcerated pursuant to a Tribal Court sentencing order

The appropriate or necessary approach may vary depending upon the number of persons incarcerated, the average lengths and costs of incarceration and the jurisdiction that has imposed the sentence



Questions

Thank You!



Please email us at WOCG@TLPI.org if you have more questions

