

## **The Role of Criminal History in Sentencing Theory and Practice**

### **Abstract**

While criminal history enhancements are ubiquitous, they are also a theoretically problematic practice. The distinction between retributive and utilitarian punishment theory was introduced, while typical approaches within these theories of punishment were described and subjected to critical analysis. None of these approaches was found to offer a complete and workable sentencing system. The hybrid theory of limiting retributivism was presented and suggested as a realistic and pragmatic approach.

The approaches to sentencing repeat offenders were considered and mutually confronted. Neither the retributive nor the utilitarian approaches were found to be sufficient justifications for broad criminal history enhancements. Enhanced culpability and limiting retributivist models of criminal history enhancements were found theoretically unconvincing but usable in practice as approaches ensuring proportionality.

Almost no evidence was found for a coherent justification for enhanced punishment for repeat offenders in Czechia. The legal framework was assessed as too vague and imprecise regarding criminal history enhancements. Policy suggestions based on Roberts and Frase's hybrid model were offered to achieve clearer limits of the criminal history enhancement and a transparent and fair process of their determination.

The effect of previous convictions on the in/out incarceration decision in Czechia was examined in the context of an unstructured sentencing system. Using complete sentencing data from 2010-2022, an extremely large dispositional magnitude of criminal history enhancements was found compared to previous research in other jurisdictions. Across offence types, the more serious an offence was, the lesser was the criminal history enhancement. When compared with England and Wales, a significantly greater criminal history enhancement was found in Czechia along with evidence for a "true" cumulative model. One potential explanation of these results is relative lenience leading to a low custody rate for first-offenders, but a higher custody rate that approaches England and Wales with accumulating prior offences.

**Keywords:** punishment theories, sentencing, criminal history, quantitative criminology