Overview
Students will explore how society addresses criminal behaviors by examining types of punishments and debating the constitutionality of specific punishments.

Grade
10

North Carolina Essential Standards for Civics & Economics
- CE.C&G.3.1 - Analyze how the rule of law establishes limits on both the governed and those who govern while holding true to the ideal of equal protection under the law (e.g., the Fourteenth Amendments, Americans with Disabilities Act, equal opportunity legislation.)
- CE.C&G.3.3 - Analyze laws and policies in terms of their intended purposes, who has authority to create them and how they are enforced (e.g., laws, policies, public policy, regulatory, symbolic, procedural, etc.)
- CE.C&G.3.5 - Compare jurisdictions and methods of law enforcement applied at each level of government, the consequences of noncompliance to laws at each level and how each reflects equal protection under the law (e.g., Department of Justice, Regulatory Commissions, FBI, SBI, Homeland Security, Magistrate, State troopers, Sheriff, City police, Ordinance, Statute, Regulation, Fines, Arrest, etc.)
- CE.C&G.3.7 - Summarize the importance of the right to due process of law for individuals accused of crimes (e.g., habeas corpus, presumption of innocence, impartial tribunal, trial by jury, right to counsel, right against self-incrimination, protection against double jeopardy, right of appeal).
- CE.C&G.3.8 - Evaluate the rights of individuals in terms of how well those rights have been upheld by democratic government in the United States.
- CE.C&G.4.4 - Analyze the obligations of citizens by determining when their personal desires, interests and involvement are subordinate to the good of the nation or state (e.g., Patriot Act, Homeland Security, sedition, civil rights, equal rights under the law, jury duty, Selective Services Act, rule of law, eminent domain, etc.)

Essential Questions
- What types of punishment does society use to address criminal behaviors?
- What is the difference between retribution, deterrence, rehabilitation, and incapacitation?
- How do the Eighth and Fourteenth Amendment offer protection to accused and convicted citizens?
- What constitutes “cruel and unusual punishment”?

Materials
- Punishments handout, attached
- “Are Prisons Driving Prisoners Mad,” article attached
- Internet access
You Be the Judge, worksheet attached (optional)

Duration
60 minutes

Procedure

The Purposes of Punishment
1. As a warm up, ask students to respond in writing to the question “What is the purpose of punishment?” Once students have jotted down some thoughts, allow them to share with the class.

2. Next, hand out the attached Punishments chart. Individually or in partners, instruct students to take 10 minutes to discuss each term, define it using any classroom resources and their own inferences, and also to compile examples of each type of punishment. When students are finished, go over the definitions and examples as a class.
   - Retribution-“paying back” the criminal for what he/she did in a punishment equivalent to the crime committed; “an eye for an eye”; example- death penalty
   - Deterrence- discouraging people from committing crimes; example-fines, jail
   - Rehabilitation- helping convicted persons change their behavior; example- juvenile intervention/counseling, community service
   - Incapacitation-separating the convicted from the community; example-jail/prison

3. Ask students:
   - In what ways are the punishments that are administered through the courts restricted? (For example, why can’t someone be sentenced to death by starvation?)
   - Allow students to offer their thoughts, guiding them if needed to consider the Eighth Amendment. (Explain to students that the Eighth Amendment’s protection from “cruel and unusual punishment” comes directly from the English Bill of Rights.)
   - Point out that very similar words (‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’) appear in Article Five of the Universal Declaration of Human Rights adopted by the United Nations General Assembly.)
   - Also, the Fourteenth Amendment’s “due process” clause protects inmates.

4. Explain to students that they will be considering the issue of punishment and participating in a debate based on specific types of punishments and their constitutionality. Hand out the attached article from TIME magazine, “Are Prisons Driving Prisoners Mad,” and instruct students to read the article and answer the questions on the bottom of their already received Punishments handout. (This can be done individually or in partners.) Once students have finished, discuss the article as a class.

5. Next, break students into small groups, all of equal number and explain that they will be participating in a debate on issues surrounding the constitutionality of punishments. Explain to students that while they may not believe in the stance they are assigned to take, a good debater is still able to argue any point. Tell students they will be assigned one of two questions:
   - Is maximum solitary confinement a constitutional punishment for someone convicted of murder?
• Is the death penalty a constitutional punishment for someone convicted of murder?

6. Next, project and explain the structure of the debate that they will participate in, either using the format below or one of your choice:
   - 5 min. Affirmative position debater (team arguing in support of the question) presents constructive debate points (basically an opening statement)
   - 3 min. Negative position debater (team arguing against the question) cross-examines affirmative points.
   - 5 min. Negative position presents constructive debate points/opening statement
   - 3 min. Affirmative position cross-examines negative points
   - 3 min. Affirmative position offers rebuttal
   - 3 min. Negative position offers rebuttal

7. Once students understand the process, assign each group a pro or con stance on one of the two questions, and instruct them to begin forming their argument. Explain to students that they should find as much evidence as possible using the internet to back up their argument, and that they should also infer what the other side may say, so that they are prepared to counter. Students should also prepare 5-10 questions to ask of the other team. Give students around 20 minutes to prepare.

8. Before beginning the debate, review your expectations for civil, respectful debate. You may wish to refer to expectations such as:
   - Be respectful, and remember that everyone has the right to their own opinion.
   - Listen to one another rather than waiting to speak.
   - No personal attacks of any sort are allowed.
   - Speak one at a time and don’t interrupt.
   - Don’t yell. Remain civil and calm.
   - Don’t take anything personal, and don’t leave upset.

9. The teacher should serve as a moderator over the debates. Begin by calling up the first two opposing teams, having them arrange their desks into two lines facing each other in the front of the room. Students should shake hands before and after the debate. Throughout the debate, the rest of the class should take notes on what they hear, specifically listening for strong arguments (contain facts and evidence) and logical reasoning. After each debate, allow students to participate in a feedback session with the debaters, noting the positive aspects for each team, as well as places where the teams could have improved their debate. You may want to end each debate round with the class voting on which side they feel won the debate.

Additional Activities
• Rather than a debate, have students deliberate whether American should ban the death penalty using the lesson at http://www.did.deliberating.org/lessons/crimepunish.html.
• Have students respond in writing to: What is the purpose of retribution, deterrence, rehabilitation, and incapacitation in our society? Which of these do you think are most effective in dealing with convicted offenders? Which is least effective? Explain.
• Assign the attached You Be the Judge.
Punishments

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retribution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deterrence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rehabilitation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incapacitation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Are Prisons Driving Prisoners Mad**

1. Describe the conditions of “supermax” solitary confinement in the Ohio State Penitentiary. How would you characterize these conditions described?

2. Why might a person receive such a punishment?

3. Why does Jeff Kluger say: “It’s possible that the very steps we’re taking to keep society safe and such prisoners in check are achieving just the opposite.”

4. What are the benefits of using “supermax” confinement? What are the negative aspects to this type of confinement?

***5. What arguments can you make that this maximum form of confinement is unconstitutional? Use evidence from the article and any other source to back this argument up. Answer this on the back of this sheet.***

***6. On the contrary, what arguments can you make that this maximum form of confinement is constitutional and justified? Again, use evidence from the article and any other source to back up your arguments. Answer this on the back of this sheet.***
Are Prisons Driving Prisoners Mad?
By Jeffrey Kluger

There's no such thing as a good day for a prisoner at the highest level of security within the Ohio State Penitentiary, a 504-bed supermax prison in Youngstown, Ohio. Every inmate lives alone in a 7-ft. by 14-ft. cell that resembles nothing so much as a large, concrete closet, equipped with a sink, a toilet, a desk and a molded stool and sleep platform covered by a thin mattress. The solid metal door is outfitted with strips around the sides and bottom, muffling conversation with inmates in adjacent cells. Three times a day, a tray of food is delivered and is eaten alone. The prisoner may spend 23 hours a day in lockdown, emerging to exercise once a day. The lights in the cell never go off, although they may be dimmed a bit at night.

If there's not much to like about the conditions in Youngstown, there's not much to like about the people confined there either. These are the men corrections folks like to call "the worst of the worst," the kind of felons who dealt drugs or led gangs or killed on the outside and continued to do so in prison. For them, maximum security would not be enough--only supermax would do. And say what you will about the draconian environment, it keeps them under control.

But that level of control may be counterproductive. It's possible that the very steps we're taking to keep society safe and such prisoners in check are achieving just the opposite. The U.S. holds about 2 million people under lock and key, and 20,000 of them are confined in the 31 supermaxes operated by the states and the Federal Government. That may represent only 1% of the inmate population, but it's a volatile 1%. Push any punishment too far and mental breakdown--or at least a claim of mental breakdown--is sure to follow. When that happens, a constitutional challenge can't be far behind.

In December, officials in Texas and California conceded that the suicide rates in their prisons are on the rise, with the majority occurring among inmates in solitary. This prompted an outcry against both systems. Lawyers for accused terrorist facilitator Jose Padilla challenged his fitness last month to stand trial, arguing that his 3½ years in solitary lockdown at a South Carolina military brig have rendered him unable to assist in his own defense. Around the same time, convicted bomber Eric Rudolph began corresponding with a reporter for a Colorado newspaper, describing his days in his 7-ft. by 12-ft. cell as a form of confinement "designed to inflict as much misery and pain as constitutionally permissible."

But is it constitutionally permissible? And even if it is, is this the kind of open-ended mental-health experiment the government should be running? "We have to ask ourselves why we're doing this," says psychiatrist Stuart Grassian, a former faculty member at the Harvard Medical School and a consultant in criminal cases. "These aren't a bunch of cold, controlled James Cagneys. We're taking criminals who are already unstable and driving them crazy."

The origin of solitary confinement in the U.S. is actually benign. It was the Philadelphia Quakers of the 19th century who dreamed up the idea, establishing a program at the city's Walnut Street prison under which inmates were housed in isolation in the hope of providing them with an opportunity for quiet contemplation during which they would develop insight into their crimes. That's not what has happened.

By the 1830s, evidence began to accumulate that the extended solitude was leading to emotional disintegration, certainly in higher numbers than in communal prisons. In 1890 the U.S. Supreme Court weighed in, deploring solitary confinement for the "semi-fatuous condition" in which it left prisoners. The case was narrow enough that its effect was merely to overturn a single law in a single state, but the court's distaste for the idea of solitary was clear. "The justices saw it as a form of what some people now call no-touch torture," says Alfred W. McCoy, a professor of history at the University of Wisconsin at Madison and author of the book A Question of Torture. "It sends prisoners in one of two directions: catatonia or rage."
Modern science has confirmed this, with electroencephalograms showing that after a few days in solitary, prisoners' brain waves shift toward a pattern characteristic of stupor and delirium. When sensory deprivation is added—as when Padilla was seen being led from his cell wearing a blindfold and sound-deadening earphones—the breakdown is even worse. As long ago as 1952, studies at Montreal's McGill University showed that when researchers eliminate sight, sound and, with the use of padded gloves, tactile stimulation, subjects can descend into a hallucinatory state in as little as 48 hours.

All of this is providing legal traction for constitutional lawyers. The most obvious point of attack is the Eighth Amendment's ban on cruel and unusual punishment. One suit involving prisoners in a Wisconsin supermax has led to rulings requiring that mentally ill inmates be kept out of such facilities. The state is challenging the decisions, and arguments will be heard in February, but at least six other states have fought similar suits, and all of them have failed. "So far, the prisoners are batting a thousand on the issue of mentally ill inmates," says David Fathi, a senior staff counsel with the A.C.L.U.

Another approach—one that's a bit of a constitutional bank shot—is to rely on the 14th Amendment's requirement of a due-process hearing before the state denies an inmate a "liberty interest," something courts define as a reasonable expectation of a freedom or right. People confined to prison have few liberty interests left and thus have little ground to challenge assignment to a strict level of security. Confinement to supermax, however, may be so qualitatively different that it does require a hearing. That's the argument Ohio inmates made in 2005, and that's the argument a unanimous Supreme Court bought, with Justice Anthony Kennedy writing that supermax isolation imposes such an "atypical and significant hardship" that prisoners must have a formal opportunity to make their case against the assignment before prison officials decide.

The eventual ruling on Padilla's fitness could liberalize things further, and similar suits are sure to follow. Even so, no one thinks the supermax system is going away soon. For all the debate the prisons generate, it may not take much to make them more palatable to civil libertarians. TVs or radios, reading material and clocks, as well as a bit of natural lighting—which provides critical time-of-day orientation—would help stabilize inmates. So would human contact with guards or other prisoners.

"Just how sterile do you have to make that cell?" asks retired prison expert Chase Riveland, who spent his career as an official in the Colorado, Wisconsin and Washington prison systems.

What's more, inmates aren't the only ones hurt by extreme incarceration. People like Padilla or the Guantánamo Bay detainees are, in theory, resources for information about the extremist groups with which they are putatively associated. "To an overwhelming degree, such people are not threats behind bars. They're opportunities," says Grassian. "We hurt ourselves by destroying their sanity." Closer to home, prisoners serving sentences for more mundane crimes do sometimes get released. Demolish their psyches while they're in prison, and nobody's safer when they get out.

Part of the reason we build prisons at all has always been the retributive urge. Those who do very bad things while they walk among us should lead very hard lives after they have been removed. That makes a lot of emotional sense. Whether it always makes practical sense is something else entirely.
You be the Judge…

Read each scenario and determine what type(s) of punishment (listed below) is appropriate for each offense. You may offer more than one punishment option.

- Long-term suspension
- Death penalty
- House arrest
- Three-strikes
- Rehabilitation
- Boot camp
- Confiscation of property
- Restitution
- County jail
- Mental institute
- Probation
- State prison
- Long-term incarceration
- Community Service
- Federal prison
- Short-term incarceration
- Juvenile detention

1. A juvenile was caught smoking marijuana at school. This was her second offense.

2. A 25-year-old man is convicted of first degree kidnapping, rape, and murder. This is his first violent felony but he has several felony convictions on his record.

3. A 60-year-old fails to pay his taxes on time and does not have the money to pay the $100,000 he owes in back taxes and penalties.

4. A single mother is convicted of shoplifting diapers, baby formula, and a few TV dinners. This is her first offense.

5. An 18-year-old is convicted of possession of cocaine. He’s currently on probation for an unrelated drug possession conviction.

6. A high-profile celebrity is convicted in insider trading. This is her first offense.

7. A father is convicted of domestic assault against his wife and daughter. This is his fourth offense.

8. A drug addict is convicted of robbing a convenience store while under the influence of drugs. This is his second offense and he has been sent to court-ordered in-patient rehabilitation once before.

9. A man with bipolar disorder and schizophrenia is convicted of aggravated assault against his boss. This is his third violent offense.

10. A woman is convicted of creating and passing counterfeit $20 bills. She has a long criminal record with convictions for fraud. She has already served 8 years in jail for various crimes.