

Humiliation and the Criminal Justice System: How Our Desire to Humiliate Contributes to Recidivism and, Ultimately, Injures Victims

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Abstract: Some judges who use shaming sanctions in the sentencing of criminals state explicitly that these sanctions work to deter future criminal behavior because they involve public humiliation (Morton, 2001; Sanders, 1998), an approach that apparently meets with the support and approval of both a significant portion of the public (Misner, 2000), as well as some scholars (Book, 1999). Specific humiliation sanctions have been upheld by courts in several states (*Bateman*, 1989 [Oregon]); Ballenger, 1993 [Georgia]; Goldschmitt, 1986 [Florida]; see generally, Garvey, 1988). Such sanctions are used in a variety of cases including spousal abuse, drunk driving, and, increasingly, matters involving so-called sexual predators.

In this paper, I will argue that (1) there is not a shred of empirical evidence that these sanctions have any utilitarian value, (2) such tactics are more likely to be (a) counter-productive, leading to further criminal activity, (b) utterly contradictory to the aims of therapeutic jurisprudence and/or restorative justice (Winick & Wexler, 2006), and (c) ultimately demeaning to the victims of the initial criminal activity, and thus (3) there should be ban on the use of such "scarlet letter" punishments (Tavill, 1988).

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