Leading Up to Washington State's Sentencing Reform Act

National Changes 1/3

1800s-1820s

National Rehabilitation Reform Attempts

New York and Pennsylvania turned prisons into penitentiaries. Isolation from the community was used as a rehabilitation technique. It was believed if individuals were free from corrupting influences, they would reform as innate goodness emerged. This reform never happened. The lack of public support and the need for institutional control resulted in abandonment of these reform aspects.

1860s

Reformers Introduce Probation

Reformers proposed probation as a custody alternative in response to the negative and degrading aspects of prison. Probation was defined as a suspended confinement sentence where individuals were supervised in the community. Due to distrust of judicial discretion, the first statewide probation system wasn't established until 1891 via legislative authorization.

1880s

Indeterminate Sentencing Gains Traction

Reformers acknowledged prison failed as a tool of rehabilitation. They also blamed the structure of determinate sentencing. With **determinate sentences**, there was no incentive to reform. Prison conduct and reformation did not impact release date.

Indeterminate sentencing was supported by believers in **retribution**. Long initial terms of confinement would be imposed, and release would occur only when it was determined the individual was safe to be released. **Parole** ensured supervision and reincarceration if needed.

Indeterminate sentencing was supported by those who believed in **rehabilitation**. The promise of release would motivate and incentivize cooperation in rehabilitative programming. Community supervision would assist in the successful return to the community. The entire process would be individualized to the needs of each person.

1900-1915

Shift to Indeterminate Sentencing and Probation

By 1900, one-half of states had enacted a system of indeterminate sentencing.

By 1915, two-thirds of states had adopted probation as an alternative to incarceration

Source: Washington Sentencing Guidelines Commission
June 7, 2024

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National Changes 2/3

1950s – 1960s

Criticisms of the "Rehabilitative Ideal"

Critics began to question structures of indeterminate sentencing. Opponents suggested that the individualized premise was fundamentally unjust and challenged the effectiveness of rehabilitation. Individualized decision making resulted in different sanctions for individuals who committed the same crime. Some primary concerns included: 1) the absence of common criteria to be considered at sentencing, 2) subjectivity of the decision makers, and 3) a lack of accurate information on which to base judgements. Further, opponents noted substantial disparity in the imposition of different sentences. Some studies questioned if individualization based on characteristics and needs was, in practice, replaced with individualization based on decision maker's individual philosophy, perspective, and beliefs.

1970s

National Publications Raise Concerns

Reports published by the Committee for the Study of Incarceration and the Twentieth Century Fund Task Force on Criminal Sentencing recommended the replacement of rehabilitative-focused sentencing systems with presumptive and determinate systems based on principles of just deserts. Other evaluations concluded that "nothing works" in rehabilitative programs and states should abandon idea that programs could reduce future criminality.

Courts Intervene

Courts intervene to stop more extreme treatment practices such as aversion therapy. These types of extreme programs influenced a loss of public support in rehabilitative theory.

Increase Use of Guidelines

Courts, parole boards, and prosecutors began voluntarily adopting guidelines regulating discretionary decisions. The US Board of Parole adopted "Guidelines for Decision Making" in 1973 based on empirical research into past practices of the agency. Researchers started using the same guideline system for sentencing in 1976 in Colorado and Vermont. Both states started to develop guidelines based on empirically defined past practices. These guidelines were meant to guide judicial discretion, not restrict it and they were not intended to change past practices. Initial interest was primarily to reduce disparity.

Source: Washington Sentencing Guidelines Commission
June 7, 2024

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National Changes 3/3

Late 1970s -1980s

Determinate Sentencing System Movement – Statutory

States began engaging in statutory reforms to move away from indeterminate sentencing systems.

Initial statutory reforms included Maine (1975) which was the first modern reform as part of a general revision and codification on substantive criminal law. And also, California (1976) which passed the Uniform Determinate Sentencing Act that declared the purpose of imprisonment was punishment.

Establishing Sentencing Guidelines Commissions

States established Sentencing Guidelines Commissions to develop proposals for new sentencing systems. Initial states included Minnesota (1980) and Pennsylvania (1982). Broad issues were determined by the Legislature while the Commission worked on the details of the reform, including the creation of sentencing guidelines.

1970s continued

Rise of Mandatory Minimums

The move toward use of deterrence and incapacitation led to reform proposals generally superimposing mandatory sentences on the indeterminate system. Professionals in the criminal justice system generally remained committed to the use of individualization.

Career Criminal Programs

As studies showed ineffectiveness of rehabilitation and deterrence, states began adopting additional incapacitative policies. For example, career criminal programs were implemented to identify the few individuals who committed series crimes frequently. The idea was if individuals cannot be reformed or deterred, they should be incapacitated.

Late 1980s

States Adopt Sentencing Guideline Structures

Minnesota and Pennsylvania adopted structured sentencing guidelines. The guidelines were intended to change existing practices and reduce disparity. Both presumptive matrices were based on the seriousness of an offense and an individual's criminal history. Other individual characteristics could be considered only in determining which sentence within the range to impose. Structures varied in how they restricted discretion and what offenses were included (only felonies or felonies and misdemeanors).

Source: Washington Sentencing Guidelines Commission
June 7, 2024

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Washington Changes 1/3

1800s

Initial Determinate Sentencing System

From territorial days through the first decade of statehood, sentences were determinate. Judges had discretion on sentence length, but no power to grant probation.

In 1899, the Legislature authorized the Governor to parole certain incarcerated individuals.

1900 - 1910

Movement to Indeterminate Sentencing

1905 – Legislature authorized judges to withhold and suspend the sentence during good behavior for persons over 21.

1907 – Legislature adopted an indeterminate sentencing system. Judges did not "fix the limit or duration" of the sentence. The State Board of Control and the Governor had authority to parole incarcerated persons after expiration of the statutory minimum. Under this system there was unreviewed judicial and administrative discretion.

1909 – Provisions were integrated as part of a comprehensive revision of the Criminal Code and served as the basic structure of Washington's sentencing system until it was replaced with the Sentencing Reform Act.

Early 1970s

Criticisms of Disparate Sentencing Arise

A study by the Superior Court Judges' Association concluded that sentences were "directly dependent upon the judge's background and unconscious biases rather than upon the defendant's needs."

A study of the King County Superior Court's sentencing practices concluded "judges do sentence according to standards although different judges impose different standards. These disparities in sentencing seem to be the results of difference in judicial philosophy rather than arbitrary decision making."

Source: Washington Sentencing Guidelines Commission
June 7, 2024

Leading Up to Washington State's Sentencing Reform Act

Washington Changes 2/3

Mid – Late 1970s

Governor's Task Force on Decision Making Models in Corrections Proposes New Sentencing Act

Under the proposal, all felonies, regardless of severity, were to be punishable by an indeterminate sentence of not more than 5 years. The proposal created a category of 'dangerous offenders' that resulted in an indeterminate life sentence.

King County Prosecuting Attorney, Christopher T. Bayley, led public attack on the proposal, resulting in major public debate on the purposes of sentencing. In 1975 a conference on sentencing at University of Washington brough national figures into the debate. In 1976, the University of Washington Law Review published a symposium issue with articles from different perspectives. The intense public debate ended up costing two Superior Court judges their reelections.

Guidelines Movement Begins to Take Hold

Prosecuting attorneys, starting with King County Prosecuting Attorney, begins creating guidelines to govern filing and disposition decisions.

1975 – Board of Prison Terms and Paroles developed guidelines for fixing minimum terms of imprisonment (based on best practices) and reconsideration of confinement length.

1977 – First Legislative consideration of sentencing reform proposed by KCPA Bayley. Passed House. Died in Senate.

1978 – Superior Court Judges' Association begins to develop sentencing guidelines using the same technique as other states. Their work is based on past judicial practice and intended to guide but not restrict discretion (e.g., voluntary).

Sentencing reform was considered at every subsequent Legislative session until the Sentencing Reform Act was adopted in 1981.

1980s

Sentencing Guidelines Movement Prevails

In 1980, the Washington Association of Prosecuting Attorneys adopted uniform charging and disposition policies.

By 1981, the use of guidelines was accepted fact throughout Washington's criminal justice system.

Source: Washington Sentencing Guidelines Commission
June 7, 2024

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Washington Changes 3/3

1981

Sentencing Reform Act Adopted

July 1, 1981, the Sentencing Reform Act was adopted. Developed by the House of Representatives' Select Committee on Corrections. Lead by Representatives Mary Kay Becker (D-Whatcom) and Gene Struthers (R-Walla Walla). The Committee spend months considering various proposals and listening to advocates on both sides. The Committee considered experiences of other states with reforms in the 1970s and the ongoing national debate that began in the 1970s. The final proposal reflects a uniquely Washington perspective and was more comprehensive and ambitious than any reform elsewhere, representing a consensus of otherwise disparate interests and groups.

In contract to the current indeterminant sentencing system which had diffused decision making, a lack of consistent standards upon which decisions were to be based, and the absence of any requirement that reasons for decisions be disclosed, the Act provided increased accountability by increasing access to information about the operation of the system and establishing standards against which its performance could be measured.

Sentencing Reform Act clarifies Purposes of Sentencing

The SRA identified six purposes of sentencing that included both retributive and rehabilitative philosophies: 1) to ensure punishments are proportionate to the seriousness of the offense and the individual's criminal history (retribution), 2) to promote respect for the law through just punishments (retribution), 3) to ensure equality in the punishments for individuals committing similar offenses (retribution), 4) to protect the public (rehabilitation), 5) offer the offender an opportunity to improve him or herself (rehabilitation), and 6) make frugal use of the state's resources.The last purpose required Legislative enactment before sentencing guidelines became effective and allowed the Legislature to make the final decision as to the level of incarceration.

1984

Washington State Sentencing Guidelines Implemented

Washington State's adult felony sentencing guideline grid became effective on July 1, 1984. The sentencing guidelines are presumptive, significantly limiting judicial discretion and representing a shift to a determinate sentencing system.

Source: Washington Sentencing Guidelines Commission
June 7, 2024