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Leading Up to Washington State's Sentencing Reform Act

Sentencing Guidelines Commission

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NOTES

Sole source of presentation material is a summary of Chapter 2 from:

Boerner, D. (1985). *Sentencing in Washington: a legal analysis of the Sentencing Reform Act*. Butterworth Legal Publishers.

Flow of presentation

- ✓ Creation of SGC
- ✓ Two main schools of thought on crime
- ✓ Indeterminate Sentencing System
- ✓ Timeline of national sentencing movements
- ✓ Timeline of Washington sentencing movements

SENTENCING GUIDELINES COMMISSION (SGC)

SGC Created Under Sentencing Reform Act

- Sentencing Reform Act: Laws of 1981, Chapter 137, § 1. (Second Substitute House Bill 440).
- SGC was established to devise recommendations for a guidelines system, including standard ranges, prosecuting standards, and governance for consecutive/concurrent sentence application.
- SGC report recommendations to the Legislature by September 1982.
- In its regular session in 1983, the Legislature shall enact laws approving or modifying the standards recommended by the SGC.
- The standards so adopted shall take effect on July 1, 1984.

SENTENCING REFORM ACT

40 Years Old!!



July 1, 1981 – July 1, 2021

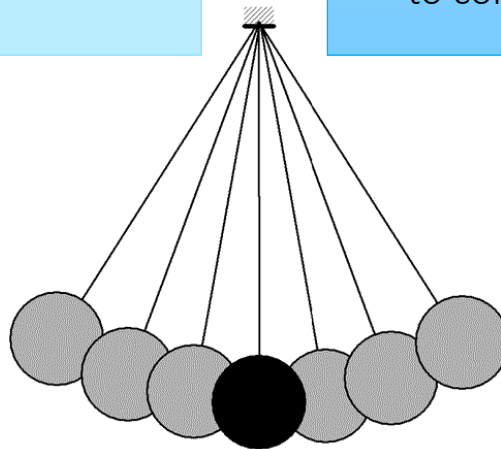
TWO MAIN SCHOOLS OF THOUGHT ON CRIME

Utilitarianism (Rehabilitation)

- General definition = 'greatest good for the greatest number'
- In criminal justice = punishment serves as deterrence, receive rehabilitation
- Looks forward by basing punishment on social benefit

Rights-based (Retribution)

- General definition = eye for an eye or "do unto others..."
- In criminal justice = criminal behavior deserves punishment
- Looks backward using the crime as basis for punishment
- Humans have free will and can make rational decisions
- Individuals who make a conscious choice to commit crime should be punished



INDETERMINATE SENTENCING SYSTEM

- Based on social theory which assumed the ability of experts could diagnose causes of individual criminal behavior and prescribe sentences tailored to defendants' individual needs.
- Decision makers:
 - Discretion to determine the length and conditions of a sentence.
 - Decision to imprison or not.
 - Length of prison sentence essentially determined by the parole board.
 - Parole board allowed to release if rehabilitation was complete and the individual was fit for release.
 - Released to parole with wide variety of conditions.
 - Failure → return to prison for unexpired original term.
 - Judges could grant probation with a variety of conditions. Failure → reimpositions of the prison sentence.
 - Criteria for making such decisions was not available = unreviewed discretion of the decisionmakers.
- Result
 - Sentences were based more on characteristics of the individual than on the nature of the crime.
 - Attempted to predict future behavior.
 - Consciously attempted to coerce individuals to virtue.

NATIONAL TIMELINE



Rehabilitation reform started in beginning of 19th Century

1820s

NY and PA turned prisons into penitentiaries.

- Isolation from community as a rehabilitation technique.
- Individual was free from corrupting influences, would reform as innate goodness emerged.
- Never happened → lack of public support and need for institutional control = abandonment of reform aspects.

NATIONAL TIMELINE



1860s

Considered custody alternatives in response to negative aspects of incarceration.

- Reformers proposed alternatives to degrading impact of prison → Probation.
- Probation = suspended confinement sentence and the individual was supervised in the community.

The first state-wide probation system wasn't established until 1891 due to American's distrust of judicial discretion, thus requiring Legislative authorization to make it happen.

NATIONAL TIMELINE

1800 > 1820 > 1860 > 1880 > 1900 > 1915 > 1950 > 1970 > 1980

Indeterminate sentencing gained traction toward end of 19th Century

- Rehabilitation reformers acknowledged the failure of prison as a tool of reform.
- Failure not just from imprisonment, but also structure of sentencing.
 - Determinate sentences → release date known so no incentive to reform.
 - Conduct in prison and personal reformation did not impact release date.
- Indeterminate sentencing was supported by those who believed in retribution:
 - Long initial terms of confinement would be imposed.
 - Release occurred only when it was determined the individual was safe to be in the community.
 - Parole ensured supervision and reincarceration, if needed.
- Indeterminate sentencing was supported by those who believed in rehabilitation:
 - Promise of release would motivate cooperation in programming.
 - Release would occur when reform occurred.
 - Supervision in community would assist in individual's return to law-abiding and productive life.
 - Entire process would be individualized to the needs of the individual.

NATIONAL TIMELINE



1900

One-half of states
enacted
indeterminate
sentencing.

1860s → 1915

Two-thirds of states
had probation.

NATIONAL TIMELINE



1950s - 1970s

Critique of the underlying premises of the “rehabilitative ideal” that resulted in a wave of sentencing reform across the country.

- Considered individualized premise as fundamentally unjust.
- Challenged the effectiveness of rehabilitation.
- Individualized decision making resulted in different sanctions for individuals who committed the same crime.
- Lead to issues of disparity:
 - Absence of common criteria to be considered in decision making
 - Subjectivity
 - Lack of accurate information on which to base judgments
- Some studies questioned if individualization based on characteristics and needs was, in practice, replaced with individualization based on decision maker’s individual philosophy and perspective.

NATIONAL TIMELINE



1976

Two prestigious national commissions* published reports recommending the replacement of rehabilitative-focused sentencing systems with presumptive and determinate systems based on principles of desert (the punishment should fit the crime).

Other evaluations concluded rehabilitative programs were ineffective in reducing future criminality.

*Reports are from the Committee for the Study of Incarceration report and the Twentieth Century Fund Task Force on Criminal Sentencing.

NATIONAL TIMELINE



Courts intervened to stop more extreme treatment practices such as aversion therapy. Increased use of these extreme programs led to a loss of public support of rehabilitative theory. Washington also used these techniques.

Example of a behavior modification program approved by the Secretary of the Washington Department of Social and Health Services:

- Group program, run as a self-contained unit, to help individuals learn self control.
- Elaborate set of rules (rise early, clean up quickly, complete participation).
- Violations were promptly imposed by members of the group so defiant member never won. Toughest individual no match against the group.
- Punishments were trivial at first (temporary loss of smoking privilege).
- Became progressively stiffer to truly draconian (loss of rec time, confinement to cell, confinement to cell in the dark, strapped to cot, strapped to cot in the dark in a diaper).
- Secretary considered terminating program after individual in program received a broken jaw. Glowing report from National Institute of Mental Health allowed program to continue.

NATIONAL TIMELINE



Increasing use of guidelines

Courts, parole boards, and prosecutors voluntarily adopted guidelines regulating their discretionary decisions.

- US Board of Parole adopted “Guidelines For Decision Making” in 1973.
- Guidelines were based on empirical research into past practices of the agency. No attempt was made to change past practices.
- Researchers started using same guideline system for sentencing in 1976.
 - Began in Colorado and Vermont
 - Empirically defined past practice for creation of guidelines
 - Matrix: offense score x criminal history score
 - Meant to guide judicial discretion, not restrict it
 - Made no attempt to change past practice
 - Sought only reduce disparity

NATIONAL TIMELINE



Reform Proposals

The move toward use of deterrence and incapacitation led to reform proposals generally superimposing mandatory sentences on the indeterminate system (e.g. Washington's firearm statute: Enacted in 1969, it required a mandatory prison term albeit of indeterminate length).

- Despite that empirical analysis did not show deterrence lead to reduction in crime.
- Professionals in the criminal justice system remained committed to use of individualization.

Other proposals were based on incapacitative principles since rehabilitation and deterrence were shown ineffective.

- Resulted in career criminal programs that identified the few individuals who committed serious crimes frequently (idea: if we can't reform or deter, we can lock them up).
- Assumption that crimes would not have been committed had the incapacitation not occurred.

NATIONAL TIMELINE



Moving to determinate sentencing system

Statutory Reforms

- 1975 Maine – the first modern reform as part of a general revision and codification on substantive criminal law.
- 1976 California – Uniform Determinate Sentencing Act, which declared the purpose of the imprisonment was punishment.

Commission-based Reforms

- 1980 – Minnesota
- 1982 – Pennsylvania
- Legislature created independent sentencing commission.
- Gave commission responsibility for developing new sentencing systems.
- Broad issues were determined by the Legislature (i.e. the MN Legislature abolished parole release) while the commission worked on the details of the reform (i.e. create sentencing guidelines).

NATIONAL TIMELINE



1800 1820 1860 1880 1900 1915 1950 1970 1980

Minnesota and Pennsylvania use guideline structure

- Intent was to change existing practices *and* reduce disparity (reform rather than rationalization).
- MN guidelines were based in principles of just desert.
- Used matrix of seriousness of crime and criminal history.
- Other individual characteristics could be considered only in determining which sentence within the range to impose, never in determining which range was applicable.
- Sentencing ranges were presumptive, not mandatory.
- PA guidelines were broader (included misdemeanors) and significantly less restrictive of judicial discretion.

WASHINGTON STATE TIMELINE



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

- 1899 – Legislature authorized the Governor to parole certain incarcerated individuals.
- 1905 – Legislature authorized judges to withhold and suspend the sentence during good behavior for persons over 21.
- 1907 – Legislature adopted 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 term.
 - Unreviewed judicial and administrative discretion.
- 1909 – These provisions were integrated as part of a comprehensive revision of the Criminal Code. This was the basic structure of Washington’s sentencing system until it was replaced with the Sentencing Reform Act.

WASHINGTON STATE TIMELINE

1970s

- 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. This disparity in sentencing seems to be the results of difference in judicial philosophy rather than arbitrary decision making.”
- Guidelines movement was a significant influence on Washington’s criminal justice system.
 - 1975 Board of Prison Terms and Paroles developed guidelines for fixing minimum terms of imprisonment (based on past practices). This governed both initial fixing of minimum terms and later reconsideration of the length of confinement.
 - 1978 SCJA began to develop sentencing guidelines.
 - Used same technique as other states.
 - Based on past judicial practice.
 - Intended to guide but not restrict discretion.
 - Purely voluntary.
 - 1981 SCJA study reported that judges used guidelines in 70% of cases and, of those, 66% were within guidelines.
 - Prosecuting attorneys developed guidelines.
 - Started with KCPA creating policies to govern filing and disposition decisions.
 - Other offices followed.
 - 1980 Washington Association of Prosecuting Attorney adopted uniform charging and disposition policies.
 - By 1981 use of guidelines was an accepted fact throughout Washington’s criminal justice system. Legislature directed Sentencing Guidelines Commission to consider the existing judicial and prosecutorial guidelines when developing its proposals.

WASHINGTON STATE TIMELINE

1975

Governor's Task Force on Decision Making Models in Corrections proposed new Sentencing Act.

- All felonies, regardless of severity, were to be punishable by an indeterminate sentence of not more than 5 years.
- Created category of 'dangerous offenders' that resulted in an indeterminate life sentence.
- King County Prosecuting Attorney, Christopher T. Bayley, led public attack on proposal that led to major public debate on the purposes of sentencing.
 - 1975 conference on sentencing at University of Washington brought national figures into the debate.
 - 1976 University of Washington Law Review published a symposium issue that brought together several articles from different perspectives.
 - Intense public debate → costs two Superior Court judges their reelections.

WASHINGTON STATE TIMELINE

1977

- First formal Legislative consideration of sentencing reform.
 - Proposed by KCPA Bayley.
 - Passed House.
 - Died in Senate.
 - Provided important part of theoretical basis for the Juvenile Justice Act of 1977.
- Sentencing reform was considered at every subsequent Legislative session until the Sentencing Reform Act was adopted in 1981.

SENTENCING REFORM ACT OF 1981

Sentencing Reform Act

- July 1, 1981 – Sentencing Reform Act adopted
 - Developed by the Select Committee on Corrections by the House of Representatives.
 - Lead by Representatives Mary Kay Becker (D-Whatcom) and Gene Struthers (R-Walla Walla).
 - Spent months considering various proposals and listening to proponents and opponents.
 - Considered experiences of other states with reforms in the 1970s.
 - Considered national debate from 1970s.
 - Reflects a uniquely Washington perspective.
 - More comprehensive and ambitious than any reform elsewhere.
 - Represents a consensus of otherwise disparate interests and groups.
- Provides Accountability
 - Access to information about the operation of the system.
 - The existence of standards against which its performance can be measured (indeterminate system: diffused decision making, lack of consistent standards upon which decisions were to be based, and absence of any requirement that reasons for decisions to be disclosed).

SENTENCING REFORM ACT OF 1981

Purposes of Sentences

- Just deserts (retribution) – articulated in first three purposes of Act.
 - Proportionality between crime and punishment.
 - Respect for the law - links proportionality and equal treatment as essential elements of just punishment.
 - Incorporation of principle of equality.
- Utilitarian (rehabilitation) – articulated in next two purposes of Act.
 - Social defense, deterrence and incapacitation.
 - Facilitative rehabilitation in which assistance is offered but never required.
- Economic Cost – decision made by the Legislature for itself.
 - Legislative enactment was required before sentencing guideline recommendations became effective.
 - Impact of sentencing recommendations allow Legislature to make final decision as to the level of incarceration.

9.94A.010 Purpose. The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to add a new chapter to Title 9 RCW designed to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself; and
- (6) Make frugal use of the state's resources. [1981 c 137 § 1.]

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