Reducing Sentencing Implementation Complexities and Errors

1) What are the implementation complexities and errors that need to be reduced?
2) Why?
3) Ideas about how to reduce?

JUDGEMENT & SENTENCE FORMS

- Complexity: J&S forms across the state
- Need Standard J&S
- J&S forms differ across the state. Sentence miscalculations are too frequent.
- More uniformity of judgement and sentencing forms across counties.
- Establish a uniform worksheet for all counties to use state-wide in order for sentences to be calculated correctly.
- Inconsistency in sentencing documents. At least 10% of J&S documents received by DOC have issues that need to be clarified:
  - Illegible
  - Blank/missing info
  - Math errors
  - Appear inconsistent with statute
- Solution:
  - Standard J&S
  - Judicial branch Q&A process

SENTENCING GRID: ENHANCEMENTS, MULTIPLIERS, AGGRAVATING & MITIGATING FACTORS

- Complexities:
  - Classes of felonies which have no clear connection to sentencing levels
  - Some lower degrees of crimes are ranked as more serious than the higher degree of the same crime.
  - Different calculations for earned release time.
  - Enhancements that function different from aggravators
  - Mathematical formulas (the grid) to calculate the sentence plus a lot of “add-ons” for specific crimes
- Enhancements – reduce/eliminate
- Complexity of sentencing makes it difficult for all participants (judges, prosecutors, defense bar, victims, sentenced individuals, DOC) to understand the terms of the sentence.
  - Simpler rules
  - Fewer add-ons (enhancements, multipliers, etc.)
- Aggravating factors are urban/rural based
• Get rid of multipliers
• Get rid of different earned-time calculations
• Complexity: Enhancements/aggravators/mitigators rarely, if ever used

CONTINUALLY CHANGING LAWS
• Sentencing laws are continually changing – driving additional complexity and leading to errors.
• Additional efforts on training practitioners on changes are needed.
• Almost 40 years of continual statutory amendments – and court decisions – related to sentencing have resulted in maddeningly complex sentences, case-by-case.
• Piecemeal changes to a complicated “holistic” system w/o enough regard for how changes to one piece affects the others.
• The attempt to do justice in individual cases with a formulaic, one-size-fits-all, sentence

FLEXIBILITY/GREATER DISCRETION FOR JUDGES
• Allow judges at all levels to have more flexibility
• Give courts discretion to consider prior record, aggravating/mitigating factors as part of individualized sentences.
• Delegate contours of sentencing practice to local authorities, i.e. let judges, working within guidelines set the final parameters of the sentence.
• Give courts discretion to consider prior record, aggravating/mitigating factors as part of individualized sentences.
• Create opportunities for individualized tailoring of the sentence, by an informed judge-after hearing from an informed prosecutor and defense council.
• Give the courts more guidance and more discretion.

DATA AND TECHNOLOGY
• Update/invest in 2020 tech
• Lack of data-driven decisions
• Sentence and best practices have not directed sentencing laws or decisions
• Sentencing decisions driven by facts and data, not politics and fear.
• Look at models across the nation and sentencing data/facts and crime rates.
• Science and best practices have not directed sentencing laws or decisions

COMMUNITY SUPERVISION
• Make community supervision terms presumptively concurrent (rather than consecutive)
• Complexity: Different rules for concurrent/consecutive sentences.
• Build in clear plans for supervision

HOLISTIC / COMMUNITY-CENTERED PRACTICES
• Get back to the story of the person
• Community informed
• Restorative practices
• Sentencing has been directed by a date - Tough on crime values
• Sentencing is too narrowly focused on incarceration
• Sentencing has been divorced from goals of rehabilitation
• Sentencing decisions reflects the needs of the system, not the needs of the people affected.
• Sentencing decisions do not reflect the actual costs borne by communities affected by crime.
• Can’t just be viewed as easier to incarcerate
• Sentencing has been directed by our outdated - Tough on crime values
• Sentencing is too narrowly focused on incarceration
• Sentencing has been divorced from goals of rehabilitation
• Sentencing decisions reflect the needs of the system, not the needs of the people affected.
• Sentencing decisions do not reflect the actual costs borne by communities affected by crime.
• Focus on individualized sentencing
• Create mechanisms to (?) upon change of circumstances
• Sentencing not connected to other systems and needs of people impacted

**Improving the Effectiveness of the Sentencing System**

1) What is not working effectively?
2) Why?
3) Ideas about how to improve?

**INDEPENDENT REVIEW OF SENTENCING’S EFFECTIVENESS**

• Lack of an independent body that is responsible for reviewing statutory sentencing on an ongoing and comprehensive manner is short-sighted.
• Need for an independent and well-funded body to advise policy makers. Similar to how the SGC was originally designed (but not how it actually operated).

**RESOURCES, PROGRAMS/SERVICES**

• Recidivism/re-offense rates are too high. Inadequate rehabilitation programs and services →
• Inefficient use of resources
  o Consecutive terms of supervision – resources could be better used for reentry activities.
  o Also, a complexity issue.
• Not enough $
• Not enough trained professionals in the system.
• DOC not equipped to deal with elderly folks.
• It’s not working because we have a ballooning aging prison population that will cost the state.
• Little quality programming in some prisons.
• Inadequate healthcare in prisons.
• Challenges with family visits, building a support system.
• Sentencing can be improved by:
Preparing the incarcerated for release.
- Housing, career training
- Mental health/drug treatment
- Transportation plan prior to release
- Anger management tools
- Tools/hope for a better life after release

SENTENCING PROCESS
- Sentences not properly individualized
  - One-size-fits-all thinking
  - Attempts to simplify
  - Tough on crime
  - Laws that promote an over-punishing era and Legislators fearful of being seen as too lenient
  - Age-appropriate sentencing
  - True second look available for all
  - Deemphasize retribution as goal
  - Focus on health, deemphasize punishment
- What is not working?
  - Length of sentences
  - Errors in scoring
- Why?
  - Revenge, not justice.
  - Consequences to communities/families not addressed appropriately
- How to improve?
  - Holistic approach
  - Diversion – alternatives
  - Radically change the grid
- Sentencing system targets disproportionate by demographic, e.g. stacking
- Sentences too low...[word crossed out] services while incarcerated.
- No way to return.
- Evidence shows long sentences have diminishing returns
- Low/no community options upon release.
- No chance (or very little) to resist initial sentencing decisions.
- Too much emphasis on responding to the “crime of the day”
- Too little opportunity for everyone impacted by crime to be considered in the sentencing process.
- Too much discretion in the hands of the prosecution only.
- Too few trials (coercive plea practices)
- Not working: lengthy sentences with no hope or opportunity for release
- Additional focus on risk-need-responsive (RNR) sentencing and sanctioning.
• Violation behavior rather than just violation count, and individual circumstances need to be considered in sanction response.
• Not working: inconsistent sentences that don’t follow guidelines of RCW 9.94A.010 - Example: 5-year max for vehicle crime theft. “Free crime”
  o How to improve: review current sentences to ensure they work to achieve 9.94A.010

HOLISTIC / COMMUNITY-CENTERED PRACTICES
• Place needs of impacted communities at heart of sentencing paradigms.
• Excessive incarceration is counterproductive to successful reentry. Woefully inadequate community supervision/support. Inadequate focus on offender risks/needs/responsibility.
• Risk-based, more community-oriented responses; greatly increased programming both inside and outside the facilities.
• Need trauma-informed rehabilitative prisons.
• Let’s visit European prisons to get inspiration!
• Too much emphasis on incarceration.
• Too little emphasis on rehabilitation.
• Too little consideration of the community as a whole.
• Too little consideration of – and opportunity for consideration of – individual circumstances and needs (this includes offenders and victims and the communities)
• Non-confinement alternatives for community supervision response to violations.

SUPERVISION
• Reduce recidivism via supervision of offenders who, research proves, will benefit from it.
• Tolling of supervision
  o Drives resources. Complex rules and lack of information make it difficult to track effectively.
  o Solution: Concurrent supervision, repurpose $ for case management and eliminate tolling.

SENTENCING GRID
• The rigid nature of the sentencing matrix.
• What it does not allow for is the flexibility to address some of the most root causes of the offender’s actions.
• Simplify the process.
• Sentence ranges are often too narrow which limits discretion in sentencing decisions.
• Ranges should be expanded.

PRE/POST-CONVICTION
• Reduce prison population and racial inequity in arrest and sentencing.
• Post-conviction review process will give offenders incentive to participate in rehabilitative programs.

Promoting and Improving Public Safety
1) What is public safety? – What does it look like?
2) What needs to be promoted and improved?
3) Why?
4) Ideas about how to promote and improve?

WHAT IS PUBLIC SAFETY
• Add to language, “transforming lives” - Change intent of language →
• All people are the Public and deserve inclusion.
• Public safety:
  o includes emphasis on health, and centered on people impacted by crime.
  o Includes efforts to reduce lethality and intensity of violence
  o Includes strengthened economic power of all communities
  o Means that our communities are invested in and believe in fairness of system
  o Is not incarceration.
  o Is to provide all communities with an environment that they can live in without fear.
  o Among other things is when the public is free from being victimized by crime.
  o Is healthy, vibrant, thriving communities.
  o Is not met through punishment and long-term sentencing.
  o Is when ALL people have their basic human needs met and have positive supportive primary relationships.
    ▪ Mental health is accessible to ALL.
    ▪ Poverty and racism are ended.
• Community environment is one where they feel comfortable/safe to live, raise a family, work and prosper
• What: only happens in a healthy, vibrant, thriving community.
• Do more good, Do less harm

IDEAS ON HOW TO PROMOTE & IMPROVE PUBLIC SAFETY

HOLISTIC / COMMUNITY-CENTERED APPROACH
• Public safety involves focus on needs of people affected.
• Sentences must be charged to truly address needs of people impacted and accountability of people responsible.
• Take into account the values that incarceration imposes on some in the community and balance that with what is accomplished via incarceration.
• Experiences and views of most impacted must be centered in direct decisions.
Why: sentencing is individual but the cause for needing is community based.
Dis-investment strategy that transfers to community-based responses/public health approaches.
People making decisions also reflect communities most affected by those decisions.
Reduce broken families. Increase personal accountability/responsibility!
Improve the education system: more respect, and more/better career training.
Homes where children have a supportive/loving mom and dad in their family/home.
Invest in marginalized communities:
  - Wrap-around services in education
  - Homes for all
  - Healthcare accessibility – mental health; Sub treatment
  - Food for all
  - Love/connection for all
  - Opportunity for all
Improve child labor laws so kids can work earlier.
All public safety inclusion.

**IMPROVE REHABILITATION & REENTRY**
- Promote a focus on returning offenders to the community with tools to be successful.
- Invest in the success of offenders while they are being supervised.
- Put rehabilitation programs into the prison system. Make it mandatory for inmates to take the program before being released.
- Reintegrate those sentenced into the community to reduce recidivism.
- Support those offenders who, research shows, will benefit from support in the community.
- Increase/Implement post-sentence/release services/programs.
- Supervision is not authorized for many non-violent felonies. This limits re-entry resources as well as system confidence in reentry programming.
- Removal barriers to full reinstatement at community rate
- Increase ability to leave when its time
- Idea: develop a multi-based early release model.

**ALTERNATIVES TO INCARCERATION**
- Alternatives to warehousing/punishment focus; ways to decrease prison population.
- Decrease incarceration as only option
- Maximize the use of system alternatives to incarceration.
- How: alt-based, community based
- Increase restorative justice programs/services
- Change is expensive when incarcerated
- Take a second look at causes during incarceration, when lengthy periods of confinement are imposed.
• Fund alternatives and use best practices.

ACCOUNTABILITY
• Strengthen accountability for violent offenders
• Incarcerate the right people, in the right way, for the right amount of time. This is an individual determination based on offense, individual needs/opportunities, and resources
• Lock up those who need to be locked up;

OTHER IDEAS FOR WHAT NEEDS IMPROVING
• System professionals must be willing to cede power to others.
• Racial disproportionality and class differences must be overtly and intentionally addressed at all levels
• Diversion, prison reform, sentence length, stacking, race, etc.
• Public safety requires appropriate and equitable distribution of resources.
• DO NOT USE VICTIMS AS PAWNS TO PUSH “TOUGH-ON CRIME” AGENDA. Don’t speak for all victims.