

“(The SRA) has become so astoundingly and needlessly complex that it cannot be used both quickly and accurately”

**Judge Dean Morgan in *State v. Jones*,
118 Wash.App. 199, 76 P.3d 258 (2003)**

Sentencing Complexities

SENTENCING GUIDELINES COMMISSION BRIEFING

OCTOBER 14, 2016



Population Under DOC Jurisdiction

Prison Confinement Population: 17,348*

- Length of Sentence
 - Less than Two Years 14.9%
 - Two to Five Years 24.3%
 - Five to Ten Years 20.9%
 - Over Ten Years 24.3%
 - Life with the possibility of Parole or Release 12.0%
 - Life without the possibility of Parole or Release 3.6%
- Average length of stay was 22.7 months for offenders released in the past year

Community Supervision Population: 17,581

- Of the current population, 45% released from prison and 55% came from court or local jails

*OMNI Snapshot, June 30, 2016 – excludes violators housed in a DOC prison facility

Multiple Sentencing Systems for Felony Offenses

Pre-Sentence Reform Act (SRA) – Sentencing laws for offenses committed prior to July 1, 1984:

- When sentenced to confinement, Court establishes the maximum term
- Indeterminate Sentence Review Board (“Board”, previously the Parole Board) sets the minimum term and date when an offender can be considered for parole
- **Board determines release dates**

Determinate Plus sentencing enacted in 2001:

- Offenders convicted of certain sex offenses and some offenders that committed their offense as a juvenile receive a minimum and maximum sentence by the Court
- **Board determines release dates**

SRA – Offenses committed on or after July 1, 1984:

- Statutes govern elements and rules that impact release dates
- Court decisions interpret how to apply many of the elements and rules to sentences
- **DOC calculates release dates**, based on information in the Judgment and Sentence (J&S) form, court decisions, and application of pertinent rules

Changes in Sentencing Policy

myth

Washington State sentencing policies have remained relatively unchanged since the Sentencing Reform Act

fact

Every year, the Legislature changes sentencing policies to address public safety concerns, public policy issues, and fiscal impacts

- 1999 – Offender Accountability Act
- 2001 – Determinate Plus
- 2002 – Drug Offense Sentences
- 2009 – Supervision of Offenders (ESSB 5288)
- 2011 – Swift and Certain Supervision
- 2015 – Est. of Juvenile Board
- The average number of felony sentencing statutes that were amended or created in each of the last 12 years: 31

reality

Changes in sentencing policies have resulted in statutory inconsistencies and complexity in sentencing.

- Some law changes have resulted in inconsistencies and discrepancy
- As laws change, the date of the offense needs to be aligned with the statute in place at that time

Sentence Length

myth

People that commit similar criminal behavior receive the same sentences

fact

There is a standard range for the length of sentence based on the offense and criminal history of a person, but many factors go into the final sentence served:

- Date of the offense
- Offender Score
- Offense Seriousness Level
- Jail Credits
- Consecutive or concurrent sentencing
- Interconnections become multiple sentences
- Sentencing alternatives
- Enhancements
- Statutory Minimums & Maximums
- Earned Time

reality

Sentences are based on many different factors that have changed over time, which adds complexity

- "Calculation of offender scores has become a very difficult, complex, and time consuming process made more complex each time the SRA is amended." Justice Tom Chambers in *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494; P.3d 1021 (2009)
- Because laws have changed over time, the time served for an offense can vary depending on the date of the offense, and as a result records staff need to be experts on hundreds of laws

Release Dates

myth

An offender's release date from confinement or supervision is solely determined by the sentencing court and does not change

fact

The court does not actually set the release date. DOC must calculate the offender's release date using the information on the J&S form and pertinent rules in statute. Factors which contribute to the calculation are:

- Credit for time served in jail
- Good Time in Jail
- Earned time in prison
- Anticipatory findings
- Enhancements
- Consecutive or concurrent sentencing
- Sentencing alternatives
- Mandatory Minimums/Maximums
- Tolling of supervision time
- Stoppage time

reality

These factors make calculating release dates complicated

- DOC is required to enter the sentence as imposed by the court, and is not to consider what the laws require a sentence to be
- Human error can happen because of the volume and complexity. As of June 30, 2016, DOC had 17,348* offenders in prison or work release. Those offenders had 29,135 different causes (different J&Ss), 50,859 individual counts, and 65,614 sentencing elements.

*OMNI Snapshot, June 30, 2016 – excludes violators housed in a DOC prison facility

Judgment and Sentence Forms

myth

Washington State courts use uniform and standardized J&S forms

fact

DOC receives a large number of J&S form variations from local courts

- The Administrative Office of the Courts has 8 different forms for felony sentencing. Most of the 39 counties do not use the standard forms and have developed their own sentencing documents.
- Submittal of these sentencing documents varies greatly from county to county. Documents are submitted in-person for prison admissions and via the mail, fax, or email for community supervision admissions.

reality

This variation in J&S forms results in increased likelihood of inefficiencies and errors

- Records staff have to process well over 100 different form variations created in the past 30+ years
- Lack of standardized forms lead to inefficiencies and increased likelihood of errors

Judgment and Sentence Clarity

myth

J&S forms are clear and complete

fact

Many J&S forms received by DOC are difficult to read and interpret

- Many are hand written
- Sentence elements are not always filled out
- Documents are often not clear and do not easily communicate the requirements of the current sentence or the relationship to other sentences

reality

These factors can result in missing information, processing delays, and entry errors

- Less than clear forms can lead to delays in processing offenders at our reception centers and many of our processes during intake, both in the community and prisons
- Last year, DOC identified over 900 sentences that needed clarification
- Some laws are more complex and if the forms are not clearly and completely filled out, incorrect release dates may result

Offender Records Staff

myth

DOC records staff perform entry level clerical work that anyone can do

fact

Working with records and sentence structures is highly technical

- Records staff are required to interpret J&S forms and must frequently contact the courts for clarification of confinement and or supervision terms
- The high rate of sentencing changes requires staff to become proficient in just one or two areas of offender records management
- The work of the records staff is critical to the operation of DOC providing the legal basis for confinement and supervision

reality

The complexity of this work results in challenges for training, succession planning, and compensation rate

- The field has changed greatly over the years from a clerical function to more of a quasi-paralegal function
- Experienced staff indicate that it takes up to three years to be proficient in the subject matter
- Bench strength and succession planning are at risk

IT Systems

myth

Programming OMNI to calculate sentence structure is like any other computer programming

fact

Programming OMNI to calculate sentence structure is complex and requires IT technical expertise as well as a working knowledge of the necessary business rules

- A third-party review of DOC IT applications noted that DOC is highly dependent OMNI to manage offenders
- OMNI programming is limited to a few staff with specialized knowledge and skills
- IT systems are challenged with programming the ever increasing complexities of sentencing and changes in criminal justice policies

reality

Continually changing sentencing policies makes OMNI programming complicated

- OMNI remains constrained by its complexity, usability, and instability
- Sentencing calculations which are not standard require “work arounds”
- These issues are not only a DOC or technical issue; but a systemic issue in the State’s criminal justice system

Risk and Liability to WA State

myth

DOC has the same liability protection as the courts

fact

With respect to sentencing and release dates the courts have judicial immunity, DOC has none

- Risk to the state is created around release dates for offenders, as DOC does not have quasi-judicial liability limits
- DOC carrying out the sentences of the courts may be one of the highest emerging risk to the State

reality

Sentencing complexity exposes the State to risk and liability (public safety, legal, financial)

- Sentencing complexities increase the likelihood that someone in prison or on supervision will be released early or held longer than the statutorily authorized sentence
- Stresses our computer systems and our workforce
- Has impacted public and workforce confidence in our State government

Summary

- **Sentencing structure is complex and ever changing**
 - Can create inconsistencies in statute
 - Adds complexity to calculating release dates
- **J&S forms are not standardized and can be difficult to read and interpret**
 - Results in processing inefficiencies
 - Increases the likelihood for errors
- **The work of Records staff is highly technical**
 - Results in challenges in training and succession planning
 - Requires additional quality assurance, given the complexity and volume of the work
- **Continually changing sentencing policies makes OMNI programming complicated**
 - IT systems are challenged with programming the ever increasing complexities of sentencing and changes in criminal justice policies
- **Sentencing complexity exposes the State to risk and liability (public safety, legal, financial)**
 - DOC carrying out the sentences of the courts may be one of the highest emerging risk to the State

Assistance Needed

There is an not an easy way to fix the system. The reality is our system has been operating and changing for over 30 years and it will not be fixed overnight.

- Standardize information that DOC needs to enter sentences into its IT systems
- Invest in people – training, workload, succession planning, and compensation
- Invest in IT solutions and governance
- Address or mitigate risk
- Convene a diverse workgroup to address sentencing and policy issues that can be made that will reduce complexity, short term and long term
- Collaborate better among criminal justice partners

Questions?

