



State, The (Columbia, SC)

1998-01-26

Section: METRO/REGION

Edition: FINAL

Page: B1

THE SEARCH FOR SENTENCING 'TRUTH' CONTINUES

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Two men, both in their 40s, were convicted of distributing crack cocaine. Neither had a criminal record. But the man convicted in Jasper County got a year of probation. The man convicted in Charleston County was sentenced to 10 years in prison.

Proponents of a bill making its way through the Legislature say those examples, which occurred between July 1995 and June 1996, show the need for sentencing reform. The two-part bill focuses on truth in sentencing as well as sentencing guidelines.

"We believe that our sentencing practices in this state have been a fraud," said Rep. Jim Harrison, who is a co-sponsor of the bill. "If a person got 20 years, we all knew he wasn't going to serve 20 years. We need credibility in our system."

To some, passage of the bill will mean more sensible sentences and more time served for violent criminals. It will give judges narrower guidelines to choose from: instead of having to picking a number between zero and 20 years on a crime, the guidelines might recommend a sentence of between seven and 15 years in prison, Harrison said.

Others say the bill's goals are respectable. But they criticize the reform effort as piecemeal. Some also say the new guidelines proposed by the bill are too complex with too many possible exceptions.

"We want to bring about more consistency in sentencing," said George Ducworth, 10th Circuit solicitor, who testified before the House's Criminal Law Subcommittee on the issue recently. "It would be better for everybody to be aware of what sentences will be - the victim, the defendant and the public."

Since January 1996, anyone sentenced to 20 years in prison or more must serve at least 85 percent of that time, said Ashley Harwell Beach, executive director of the sentencing guidelines commission, which has been studying the issue for years.

The original bill proposing the stricter sentencing first required all offenders to serve 85 percent, Beach said. But legislators worried the prison population would skyrocket and sought to apply that percentage only to people sentenced to 20 or more years in prison.

At the time, non-violent offenders were serving about one-quarter of their sentences and violent offenders were serving about a third, she said.

As a follow-up to achieve the original goal, this year's bill requires everyone to serve 85 percent of a sentence. But it pairs that mission with guidelines to help judges mete out punishment.

The guidelines, which are not mandatory, use a point system to determine sentences. The type of crime and other factors about a case determine the number of points a person is assigned.

Points can be added for a prior criminal record or the use of a weapon, she said. The total is then matched to a grid that shows the sentence range.

"The goal we started with was that violent offenders serve more time," she said.

The commission found, for example, that someone convicted of armed robbery now serves an average of 7.6 years in prison. Under the new guidelines, the same person would serve an average of 12.1 years.

A person convicted of voluntary manslaughter now serves an average of 7.7 years. Under the guidelines, that person would serve about 10 years.

The goal is to make sure that comparable crimes and facts result in similar sentences.

"We want to bring about consistency in the process," Harrison said. "A defendant and a victim can know what to expect."

But some critics say the proposal makes sentencing too complex, making it mirror the federal system, long criticized for being confusing.

"Some have compared federal guidelines to the IRS tax code," said Tommy Whiteside, recently retired deputy chief U.S. probation officer for South Carolina and an expert on federal guidelines.

But Whiteside, a consultant for the commission, is there to bring the best of the federal system to the state courts. While both use a point system, the state system is based on few criteria, simplifying the process, he said.

But critics say there is an overall problem with the criminal code that can't be fixed each time the Legislature comes into session. Columbia defense attorney **Jack Swerling** said what's needed are sweeping changes.

"It's just another stopgap," he said of the bill. "It's plugging a hole."

Because the guidelines are not mandatory, the goal of having a more uniform system isn't realized, **Swerling** said. Judges can sentence people above or below the recommended guidelines simply by writing down their reasons. It's not clear yet whether those reasons will be made available to the public.

Ducworth said he supports the aims of the bill but believes operating the more complex system will require a lot more money and personnel.

"If it is passed," he said, "we want to make sure the necessary resources are in place."

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