



A Statement Regarding Utah's Indeterminate Sentencing System

Executive Summary: By avoiding precise and fixed sentencing and release determinations, Utah's primary sentencing interests are best protected. An offender's release from incarceration is contingent on the individual nature of the crime committed, mitigating and aggravating circumstances associated with the criminal offense, past criminal history, the offender's conduct in the prison system, and proven amenability to rehabilitation over time. Our indeterminate system preserves control over the offender and enables a careful evaluation of the offender prior to releasing him back into the community.

We, the Utah Sentencing Commission, issue this statement by way of explanation and in support of preserving Utah's indeterminate sentencing structure.

Primary Sentencing Interests

When considering sentencing and release determinations, the primary points of focus for judges and the Board of Pardons and Parole are:

- 1) Public Safety
- 2) Victim Rights
- 3) Offender Rehabilitation

While enumerated as three areas, the last two can be looked at as subcomponents of Public Safety because each enhances safer communities. Specifically, when the devastating concerns of victims are addressed by the judicial system, the whole community benefits because it is less likely that additional victimization will occur. Moreover, offender rehabilitation minimizes the risk to the public upon the offender's return to society – true public safety is determined after incarceration and release into the community. The driving focus of indeterminate sentencing is public safety.

Indeterminate Sentencing

The Miriam-Webster Dictionary defines "indeterminate" as "not definitely or precisely determined or fixed." One unfamiliar with the nuances of indeterminate sentencing may, at first blush, find the report of an offender's sentence perplexing, vague, or even "weak on crime."

Understandably, an initial reaction to these observations is to argue for more precise and pre-measured sentences.

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The Utah Sentencing Commission’s purpose in drafting this statement is to explain the demonstrated benefits of Utah’s indeterminate system. By avoiding precise and fixed sentencing and release determinations, Utah’s primary sentencing interests are best protected. These interests are protected by virtue of the ability to individualize sentencing and release determinations. For example, unlike a determinate sentencing structure, an offender does not typically leave the prison merely because of the passage of time. Rather, release is contingent on the individual nature of the crime committed, mitigating and aggravating circumstances associated with the criminal offense, past criminal history, the offender’s conduct in the prison system, and proven amenability to rehabilitation over time. Our indeterminate system enables a careful evaluation of the offender prior to releasing him back into the community - in addition to the judge’s findings following trial or plea, the Board of Pardons and Parole exercises broad discretion in order to tailor dispositions to best address the public safety risks offenders pose. This discretion includes determining conditions of probation or parole in accordance with the unique potential risks associated with each offender.* These decisions consider offender risk profiles, their probation/parole conditions, supervision, and revocations. Each individual case can be fine-tuned to the particular risks and propensities individual offenders present. Ultimately, this indeterminate sentencing system best empowers judges and the Board of Pardons and Parole to ensure that an offender, who continues to present indications of risk to the public, remains incarcerated. Thus, our present structure gives us the best of both worlds – a front and back end evaluation of each offender.

The primary difference between a determinate and indeterminate sentencing system is *when* the sentence is determined. In a determinate system, the offender knows with reasonable certainty when he can expect to return to the community. This release determination is made by a judge who has the limited benefit of a pre-sentence report and observation of the offender during court proceedings. Parenthetically, with a long-established expected release date, the offender has less motivation to cooperate or rehabilitate while incarcerated.

Conversely, in an indeterminate system the offender’s sentence is largely in a state of flux – continually being evaluated using pre-sentence reports, court sentencing documents and remarks of the trial judge, victim impact statements at both initial sentencing and at parole hearings, observations of the offender’s behavior and efforts to rehabilitate, and continued reports and evaluations by Board of Pardons and Parole and prison staff. This makes it less likely that decisions will be based on inaccurate, incomplete, or stereotypical information and provides maximum information available over a prolonged period to the entity making the release determination and best ensures that public safety is the paramount consideration. Additionally, built in is a high level of motivation for the offender to genuinely participate in rehabilitative efforts. This benefits the offender and contributes to a safer public when the offender ultimately returns.

Finally, while one criticism of indeterminate sentencing systems is a perception of disparity in sentencing, our state has been successful in combating disparity. This is partially achieved by sentences and release determinations that are consistent with the Sentencing and Release Guidelines promulgated by this Commission. These guidelines, which include matrices that factor in the nature of the crime along with criminal history of the offender, provide the judicial branch guidance prior to sentencing/release determinations. Our research shows general uniformity in sentencing across judicial districts. Another vital element in preventing disparity is the fact that an intimate five-member Board of Pardons and Parole considers each and every release determination. This fosters consistency and familiarity across the board.

Mandatory Minimums

A common, and understandable, reaction to a particularly heinous crime is to legislate more rigid penalties for similar future offenses. Often these penalties include mandatory minimum sentences where the offender is certain to serve a minimum period of incarceration. These legislative mandates immediately address public outcry and enable the proponent to claim the moniker “tough on crime.” However, mandatory minimum legislation always has the effect of taking discretion away from judges and the Board of Pardons and Parole and conversely exposes additional vulnerability to public safety, as discussed above. While Utah has carved out some mandatory sentences within its indeterminate system (e.g. murder and many sex offenses), it must be understood that each required mandatory sentence comes at the cost of lost judicial and Board discretion. The benefits of addressing public perception on one particular case must be carefully weighed against the certain loss of the ability to exercise discretion in all cases.

Does this mean Utah and its indeterminate sentencing system is more lenient with criminal behavior? No, Utah’s experience with mandatory minimum sentencing would indicate otherwise. For example, Utah experimented with mandatory minimum sentencing for sex offenses against children in 1983. These were repealed in 1996 after considerable experience and research indicated mandatory minimums for sex offenses were failing Utah’s justice system, its citizens, and most importantly, the vulnerable victims these mandatory minimum sentences were designed to protect. For instance, mandatory minimum sentences were resulting in more child sex cases going to trial though evidence strongly favored the prosecution. It was observed that in the mandatory minimum scheme, defendants had nothing to lose by going to trial as their time of incarceration was definite if found guilty. In these trials, child victims were forced to re-live their private devastation in a public forum, in the presence of the offender, and under cross-examination from defense counsel. Additionally, for cases that were not incredibly strong or the credibility of the child witness was perceived to be less than stellar due largely to the victim’s reluctance to testify, a plea agreement was negotiated and the offender ended up not being convicted of the mandatory minimum offense at all – rather, they often ended up with a plea agreement to a second or third degree felony when the underlying charge was a first degree felony.

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Since repealing these mandatory minimums in 1996, research indicates Utah is actually getting more sex offenders convicted of first degree felonies. First degree felony sex offense admissions to prison have dramatically increased. These sentences have the potential of keeping the offender in prison for life. Additionally, since 1996, the annual number of felony sex offenders admitted to prison has significantly increased. Movement away from mandatory minimum sentences has also resulted in fewer trials as defendants enter a plea prior to trial in hopes of leniency by the Board of Pardons and Parole. These inmates end up being more motivated to rehabilitate and easier to supervise within the prison system as they have hope for release contingent upon prison behavior. Most important though, in addition to keeping dangerous offenders locked up for prolonged periods based on individual case assessments, fewer child victims are required to re-live their anguish by testifying in court.

Conclusion

In summary, Utah's present indeterminate sentencing structure, while operating on a balance focusing on individualization and largely reliant on conscientious judges, Board of Pardons and Parole, and their supporting staff, is working well by best protecting society, serving victims, and enabling maximum rehabilitation for offenders. This balance has been proven most effective over time especially in comparison with Utah's past negative experience with mandatory minimums.

The Utah Sentencing Commission remains committed to evaluate and identify ways our indeterminate system can be protected and improved.

*Many determinate sentencing systems have eliminated parole entirely. Parole in an indeterminate system is an additional safe-guard to protect the public as the Board of Pardons and Parole has continuing jurisdiction to monitor the offender after release. This continuing jurisdiction enables the Board of Pardons and Parole to modify conditions of parole or revoke as needed. It has been observed that many revocations result from technical violations of the parole conditions rather than the commission of new crimes. This is continued assurance that the Board of Pardons and Parole places public safety as its highest priority.

