



Jessica's Law: Utah's Response

Recently the state of Utah has been accused by Fox's Bill O'Reilly of being weak on crime, particularly sex offenses against children. Mr. O'Reilly blindly advocates adopting Jessica's Law (mandatory minimum sentence of 25 years) without considering the unintended consequences to Utah's indeterminate sentencing structure nor the victims and community reliant on well-established sentencing safeguards. It is important to note that local media and editorial boards understand and support Utah's indeterminate sentencing structure.

The following is intended to assist those who are puzzled or alarmed by Mr. O'Reilly's rant against Utah. For approximately a decade, Utah adopted a mandatory minimum sentencing structure. This structure was repealed after problems became apparent and an indeterminate system replaced it in 1996. An indeterminate sentencing system places initial sentencing duties with the judge and then the Board of Pardons and Parole (BOP) makes determinations as to if and when an offender is released from prison. This enables BOP to keep these dangerous offenders out of our communities for prolonged periods, up to life. Offenders also have incentive to behave in prison and sincerely cooperate with treatment opportunities when they have no release date because they tend to have optimism that their actions will be noted by BOP and will be rewarded. On the other hand, offenders who have a set sentence under a minimum mandatory system have little incentive to improve themselves, take responsibility for their criminal conduct, or cooperate while in prison because their future release date is known and concrete.

A comparison of Utah's experience with mandatory minimum and indeterminate sentencing reveals that since Utah eliminated mandatory minimum sentences for child sex offenses in 1996, the number of first degree sex offense admissions to prison has **DOUBLED** and the percent of perpetrators receiving probation has **DECREASED** by more than 12%. Additionally, since 1996, the annual number of felony sex offenders admitted to prison has **INCREASED** by 42%.

The most important consideration when evaluating a sentencing system is the impact on victims and society at large. In a mandatory minimum jurisdiction, an

offender has little to gain by entering a plea to the criminal count as charged -- once convicted, the time spent in prison is concrete and absolute. Therefore, it is an easy decision for the offender to go to trial and "roll the dice" with a jury. More trials are held in mandatory minimum jurisdictions. Additionally, in order to preserve a semblance of a case against an offender where the victim is particularly vulnerable, it is more likely or frequent that a prosecutor will allow the offender to enter a plea to a lesser charge with a lesser penalty in order to spare the victim from the pains of testifying at trial. This is particularly true in sex offenses against children where victims are most vulnerable and where their testimony may be misperceived by a jury to lack credibility.

In contrast, Utah's indeterminate system provides incentive to the offender to enter a plea to a count as charged because the offender's prison sentence is not yet determined and the offender may focus on the minimum (bottom) sentence pronounced by the sentencing judge and hope to convince BOP to release after the minimum years have been served. This results in fewer trials necessitating victim participation and fewer plea deals resulting in lesser penalties for the offenders. And the reality is that BOP has a strong reputation for identifying dangerous recidivism risks and keeping them in prison for prolonged periods. In fact, with a ceiling of life in prison on many sex offenses, Utah sentencing laws actually have the capacity to punish offenders more than what Jessica's Law would provide.

In summary, Utah's present indeterminate sentencing structure, while admittedly operating on a gentle balance largely reliant on a stable Board of Pardons and Parole, is working well and best serving victims, protecting society, and enabling maximum rehabilitation for offenders. This balance has been proven most effective over time and in comparison with Utah's experience with mandatory minimums. That said, can our system improve? Yes! The Sentencing Commission is committed to study and identify ways our system can be improved and particularly endorses and notes improvements which will come with the recent passage of HB 161, Sexual Offenses Against Children and HB 102, Sentencing for First Degree Felony Murder.