

SENTENCING

The Philosophy/Purpose of Sentencing

1. Punish the offender
2. Protect and compensate the victim and society
3. Reduce the likelihood of future crimes by the offender through rehabilitation and incapacitation
 - The punishment should not only fit the crime, but the defendant as well -

When to start thinking about sentencing

1. Screening
2. Plea agreements
3. Sentencing agreements

The Judgement - §77-18-1, et seq.

1. Provides the court with options for sentencing

Jail/Prison/GPS

Concurrent/Consecutive

Fines/Fees

Restitution

Treatment

Compensatory service for graffiti

Costs for investigation, probation and treatment

High School/GED

Defendant must complete a Financial Declaration (§77-38a-204)

If the defendant refuses to provide all required information, they waive the right to seek amendment or alteration of the restitution order relevant to the undisclosed information

The State must provide, upon request:

- A. Identity of all victims
- B. Itemize any economic loss suffered by the victim
- C. Include a specific statement of loss for each victim
- D. Identify any physical, mental or emotional injuries
- E. Describe impact of personal welfare or familial relationships
- F. Identify requested mental health services for victim and their family

2. Provides an option for a Pre-sentence Investigative Report (PSR)
 - A. Must contain a victim impact statement
 - B. Must include findings from any screening or assessment
 - C. Must include recommendations for treatment
 - D. Must be provided 3 working days before sentencing
 - E. Must include the defendant's Financial Declaration

3. If there are alleged inaccuracies to the PSR
 - A. The parties should try to resolve prior to sentencing
 - B. The parties may request 10 days to correct the PSR
 - C. If no one challenges the accuracy of the PSR at sentencing, the issue is waived.

State v. Wilbert, 2006 UT App. 470.
 - D. If the PSR is challenged, the court must make findings at sentencing

State v. Maroney, 2004 UT App. 206, 94 P.3d 295.
 - E. To determine the accuracy of PSR you MUST know the Sentencing Guidelines, including:
 1. The Matrix
 2. Aggravating/Mitigating factors
 3. Do the math - it is often wrong
 - G. Do not miss opportunity to present other, relevant information to the court
 1. The court can consider other crimes, even if the defendant was not convicted of those crimes.
 - A. The court SHALL receive any testimony, evidence or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.
§77-18-1(7).
 - B. *State v. Lipsky*, 639 P.2d 174 (Utah 1981)
 - H. Make sure all victims are properly represented
 1. Victim is defined in §76-3-201(e) as any person who has suffered pecuniary damages
 2. Person includes an individual, public or private corporations, government, partnerships and /or an unincorporated association.
State v. Stayer, 706 P.2d 611, 613 (Utah 1985).

- I. Make sure restitution is properly covered
 1. Can be ordered as part of probation AND as a separate entity §§76-3-201(3), (5), and 76-3-201.1(1). Also *State v. Dickey*, 841 P.2d 1203 (Utah Ct. App. 1992), citations omitted.
 2. The court retains jurisdiction under §§76-3-201 and 76-3-201.1 for purposes of collecting restitution
State v. Nones, 11 P.3d 709 (Utah Ct. App. 2000)

EVIDENCE BASED SENTENCING

1. The latest sentencing theory is Evidence Based Sentencing
2. The premise is that the system is broken and needs repairing
3. The basis is research related to intervention strategies
 - a. Risk Control
 - b. Risk reduction
4. Components:
 - a. An assessment of Risk Factors
 - b. An assessment of Protective Factors
 - c. An assessment of Criminogenic Needs
 - d. An estimate of Recidivism Risk
 - e. Identifying the most effective sentencing options and interventions
5. Basic principals
 - a. Level of Risk
 - i. Higher risk requires higher supervision
 - ii. Avoid significant intervention with low risk offenders
 - iii. Target moderate and high risk offenders
 - b. What are the needs?
 - i. Who needs interventions
 - ii. Which risk factors should probation target
 - iii. Don't distract offender with conditions of probation beyond what directly addresses the defendant's risks/needs
 - c. What research indicates works

i. Cognitive behavioral interventions based on social learning principals

- A. Thinking affects behavior
- B. Anti-social thinking and behavior
- C. Thinking can be influenced
- D. Behavior can be changed by changing our thinking

- I. Cognitive restructuring
- II. Cognitive skills development
- III. Behavioral strategies

ii. Goals

- A. Interrupt anti-social patterns and restructure
- B. Provide skills to handle conflicts and improve problem solving

abilities

d. How responsive is the defendant likely to be to intervention

6. What researchers say does not work

- a. Punishment, sanctions, incarceration
- b. Specific deterrence or fear based programs
- c. Military or boot camp type programs
- d. Intensive supervision without treatment
- e. Drug Education programs
- f. Drug prevention classes based on fear or emotional appeal
- g. Non-action oriented group counseling
- h. Self-esteem programs
- i. Non kill based programs.

References:

2013 Adult Sentencing and Release Guidelines

DUI Best Sentencing Practices Guidebook

Evidence-Based Sentencing: The Science of Sentencing Policy and Practice, Chapman Journal of Criminal Justice.

Research Based Smarter Sentencing, Training for Prosecutors, Public Defenders, Judges and Community Corrections Professionals, Participant Notebook. The Justice Management Institute.

State v. Sotolongo, 73 P.3d 991 (UT Ct. App. 2003)